

PAWNEE NATION OF OKLAHOMA

Law and Order Code



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October 1, 1993

PAWNEE NATION OF OKLAHOMA

Law and Order Code

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PAWNEE NATION OF OKLAHOMA

Law and Order Code

CONSTITUTION

Constitution of the
Pawnee Nation of Oklahoma

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CONSTITUTION OF THE PAWNEE NATION OF OKLAHOMA

*(Revised by Referendum vote on July 14, 1998
and as Amended on January 4, 2003 and further revised by referendum vote on
June 14, 2008)*

PREAMBLE

We, the members of the four confederated bands of Indians, namely, Chaui, Kitkehahki, Pitahawirata and Skidi which now constitute the Pawnee Nation of Oklahoma, with faith in the purposes of our Supreme Being, with abounding pride in our cultural heritage and the determination to promote through marshaled efforts our social, economical and political advancement, do solemnly ordain and establish this Pawnee Nation of Oklahoma and adopt this constitution pursuant to the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) which shall supersede the constitution approved by the Secretary of the Interior on November 26, 1937, and ratified on January 6, 1938, as amended.

ARTICLE I-NAME

The name of this organization shall be the "Pawnee Nation of Oklahoma."

ARTICLE II-PURPOSE

Section 1. To secure for the Pawnee Nation of Oklahoma and its members rights, powers, privileges and benefits of a sovereign nation.

Section 2. To establish its Jurisdiction and Powers.

- (i) The governmental powers of the Pawnee Business Council, acting for the sovereign Pawnee Nation of Oklahoma shall extend to all persons and to all real and personal property including lands and other natural resources, and to all waters and air space, within the Indian Country over which the Pawnee Nation of Oklahoma has jurisdiction. The governmental powers of the Pawnee Nation of Oklahoma shall also extend outside the exterior boundaries of Indian Country to any persons or properties which are, or may be included within the jurisdiction of the Pawnee Nation of Oklahoma.
- (ii) The Pawnee Nation of Oklahoma is empowered to maintain under any laws of the U.S. and/or Pawnee Nation of Oklahoma's law and order, and judicial systems to protect the peace, safety, health, and welfare of the members of the Pawnee Nation of Oklahoma, provided the concepts of separation of powers is maintained.
- (iii) The Constitution is the supreme law of the Pawnee Nation of Oklahoma and all persons subject to its jurisdiction. The Pawnee Business Council shall exercise its power consistent with the provisions of this Constitution and the Corporate Charter of the Pawnee Nation of Oklahoma.

ARTICLE III-MEMBERSHIP OF TRIBE

Section 1. The current membership of the Pawnee Nation of Oklahoma shall consist of:

- (a) All persons enrolled or entitled to be enrolled on the official annuity (base) roll of the Pawnee Nation of Oklahoma as of February 19, 1937; and
- (b) All children born of a lawful marriage between members of the Tribe since the date of said roll;
- (c) All children of one-quarter (1/4) or more Pawnee Indian blood born on or after February 9, 1938, of a lawful marriage of an enrolled member.

Section 2. The future membership of the Pawnee Nation of Oklahoma, after the adoption of this Constitution, shall include any individual who applies for membership and possesses at least one-eighth (1/8) degree Pawnee Indian Blood, as amended on January 4, 2003 on Amendment Number 1.

Section 3. The Pawnee Business Council shall have power to prescribe rules and regulations covering future membership of the Pawnee Nation, including the approval and loss of membership, provided:

- (i) Such rules and regulations shall be subject to the review of the Nasharo Council;
- (ii) A person shall not be eligible for membership, if enrolled as a member of another Indian Tribe.

ARTICLE IV-PAWNEE BUSINESS COUNCIL

Section 1. The supreme governing body of the Pawnee Nation of Oklahoma shall be the Pawnee Business Council, which shall consist of eight (8) members.

Section 2. Subject to the limitations imposed by this Constitution and applicable Federal law, the Pawnee Business Council shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation, the transaction of business, and by otherwise speaking or acting on behalf of the Pawnee Nation of Oklahoma on all matters which the Pawnee Nation of Oklahoma is empowered to act, including the authority to hire legal counsel to represent the Pawnee Nation of Oklahoma.

Section 3. All acts regarding Membership or Claims or Treaty Rights of the Pawnee Business Council shall be subject to review by the Nasharo Council in accordance with this Constitution.

Section 4. The present Pawnee Business Council members shall serve until the next regular election or until their successors are elected and installed provided:

- (i) The Pawnee Business Council shall provide an election commission to conduct all elections, provided that regular elections are held on the first Saturday in May of each odd numbered year.
- (ii) No member of the Pawnee Nation of Oklahoma, eighteen (18) years of age or older, shall be denied the right to vote by secret ballot, either in person or by absentee ballot, provided that no write-in votes shall be allowed.
- (iii) Members of the Pawnee Nation of Oklahoma, twenty-five (25) years of age or older, shall be eligible for election to the Pawnee Business Council. Members of the Pawnee Nation convicted of a felony or dishonorably discharged from the Armed Forces of the United States of America are ineligible for candidacy.
- (iv) At the first regular election after the adoption of this Constitution (1999), the President, Treasurer, and the First and Second Council Members shall be elected to a four year term and the Vice-President,

Secretary, and Third and Fourth Council Members shall be elected to a two-year term in order to stagger the terms of office:

- (a) Candidates shall declare the position they are seeking.
- (b) If there are positions which are vacant due to lack of candidates, those positions shall be considered vacant and filled according to Article VI.

Thereafter, all members of the Pawnee Business Council shall be elected to a four-year term of office and shall serve until their successors shall be duly installed in office. In cases when a vacancy is being filled to complete an un-expired term due to death, resignation, forfeiture, or recall of a Pawnee Business Council member, a successor will be appointed pursuant to Article VI of this Constitution.

- (v) A Nasharo Council member shall resign his/her position if elected or appointed to the Pawnee Business Council.
- (vi) A Pawnee Nation of Oklahoma employee shall resign his/her position if elected or appointed to the Pawnee Business Council.
- (vii) A Pawnee Business Council member shall not be eligible for employment by the Pawnee Nation of Oklahoma.
- (viii) Elected members of the Pawnee Business Council shall be inaugurated and sworn into office fourteen (14) calendar days after the Election Day.
- (ix) Pawnee Business Council records and all related documentation for each outgoing Pawnee Business Council member shall be made available to the newly elected Pawnee Business Council members. Failure to comply shall result in ineligibility to file for candidacy for the Pawnee Business Council for ten (10) years or until records and documents are returned.

Section 5. All acts of the Pawnee Business Council shall be determined by a majority vote of the membership present, provided five (5) members of the Council shall constitute a quorum to transact business. In the event of a tie, the chairperson or chairperson pro tem shall cast the deciding vote.

Section 6. Regular quarterly meetings of the Pawnee Business Council shall be held on the first Saturday in February, June, August and November of each year in a place designated by the Pawnee Business Council, provided:

- (i) Special meetings may be called by the President.
- (ii) Special meetings shall be called by the President within two (2) weeks after receiving a written request, by regular mail or by certified and return receipt mail, from a majority of the occupied Pawnee Business Council positions, provided:
 - (a) If the President fails to call and conduct a special meeting as requested within two (2) weeks, a majority of the occupied members of the Pawnee Business Council shall be authorized to call and conduct a special meeting by affixing their signatures to a document listing in detail the need for the meeting and citing this Section of the Constitution as their authority to meet.
 - (b) A minimum of two (2) days notice of all meetings, regular or special, shall be published in a newspaper and posted in public view. Provided, that in an emergency, posting in public view for two (2) days shall be deemed sufficient notice. Notice shall include the agenda.

Section 7. All members of the Pawnee Business Council shall attend tribal constitution orientation classes as prescribed by the Pawnee Business Council.

ARTICLE V-DUTIES OF OFFICERS

Section 1. The President shall preside at all meetings of the Pawnee Business Council, joint meetings of the Pawnee Business Council and the Nasharo Council, and all general meetings and shall vote only in the case of a tie. The President shall have general supervision of the affairs of the Pawnee Business Council and shall perform all duties pertaining to the office of the President. The President shall administer oaths and affirmations when required or permitted. The President shall be bonded.

Section 2. In the absence of the President, the Vice-President shall perform the duties of that office. In the case of vacancy, the Vice-President shall succeed at once to the office of the President. The Vice-President shall be bonded.

Section 3. The Secretary shall, be responsible for the following duties:

- (i) Record the proceedings of all meetings of the Pawnee Business Council and Nasharo Council, and all special meetings as assigned by the Pawnee Business Council.
- (ii) Prepare the agenda for meetings of the Pawnee Business Council.
- (iii) Maintain all records and files of the Pawnee Business Council. All records and files of the Pawnee Business Council, except such records as shall be explicitly made exempt by law, shall be public information to any member of the Pawnee Nation of Oklahoma.
- (iv) Maintain the Pawnee Nation of Oklahoma official membership roll.
- (v) Attest to enactments of the Pawnee Business Council.
- (vi) In absence of the President and Vice-President, call to order regular and special meetings of the Pawnee Business Council until a Chairman pro tem is selected.
- (vii) Perform the duties of the Treasurer, in the absence of the Treasurer.
- (viii) The Secretary shall be bonded.

Section 4. The Treasurer shall, be responsible for the following duties:

- (i) Receive funds from all sources for which the Pawnee Business Council is held accountable, and maintain financial records which shall reflect actual receipts and disbursements of all funds and which shall reflect the financial position of the Pawnee Nation of Oklahoma.
- (ii) Deposit funds from any and all sources for which the Pawnee Business Council is held accountable in an insured bank or other approved financial institution.
- (iii) Disburse by check, the funds from any and all funds for which the Pawnee Business Council. All checks shall be signed by the Treasurer and countersigned by the President.
- (iv) An annual independent audit of all funds for which the Pawnee Business Council is held accountable.
- (v) Present financial status reports and budget reports as determined by the Pawnee Business Council.
- (vi) Perform the duties of Secretary, in the absence of Secretary.
- (vii) The Treasurer shall be bonded.

ARTICLE VI-VACANCIES

Section 1. - In the event of Presidential vacancy, the Vice-President shall temporarily vacate their office and fulfill the duties of the office of President until another president is elected by a majority of Pawnee tribal voters in a specially called election. The Business Council shall elect from the current council membership a Temporary Vice President to serve until the next

President is elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Vice President shall return to his/her previous position.

Section 2. – If the offices of President and Vice President are vacant the Treasurer shall temporarily vacate their office and fulfill the duties of President and the secretary shall temporarily vacate their office and fulfill the duties of Vice President. The Business Council shall elect from the current council membership a Temporary Treasurer and a Temporary Secretary until the next President and Vice President are elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Treasurer and Temporary Secretary shall return to their previous position.

Section 3. – If the offices of President, Vice President, and Treasurer are vacant the Secretary shall temporarily vacate their office and fulfill the duties of the President. The Business Council shall elect from the current council membership a Temporary Vice President, Temporary Treasurer, and Temporary Secretary until the next President, Vice President, and Treasurer are elected by a majority of Pawnee tribal voters in a specially called election, at which time the Temporary Vice President, Temporary Treasurer and Temporary Secretary shall return to their previous position.

Section 4. – Notwithstanding Article 4 Section 5, if four or more positions are vacant a quorum shall consist of all of the remaining members. If all officer positions are vacant any remaining council members may call a special Business Council meeting, at which that council member shall chair and the council shall elect officers.

Section 5. – If a vacancy occurs in a First, Second, Third, or Fourth Business Council member position before the last six months of a term, it shall be filled by a majority of Pawnee member voters in a specially called election.

Section 6. – If a vacancy occurs in a First, Second, Third, or Fourth Business Council member position in the latter six month of that term, that position shall remain vacant until the next general election.

Section 7. – If a vacancy occurs in any Business Council position in the six months prior to a general election, the specially called election shall be held with the general election.

Section 8. – Any successful candidate who is elected in a special election shall serve only the remaining term of that vacant position.

Section 9. – Unless section 6 & 7 apply, the election Board shall set and conduct a special election within 60 days but not before 30 days after a position is vacant.

Section 10. – A position is vacant when:

- (i) Subject to an effective date, a resignation is received in writing by the Office of the president
- (ii) Vacant pursuant to Article VII, Section One
- (iii) Death
- (iv) Recall
- (v) Removal
- (vi) A suspension is imposed under Section 3, in which case a specially called election is not required if the Business Council finds that suspension is likely to be resolved within six months. If the Business Council finds that the suspension is likely to be longer than six months, they may call a special election. If the suspension is removed, the person elected in the special election shall step down

and the suspended Business Council Member shall retake their position.

ARTICLE VII-FORFEITURE, RECALL, REMOVAL

Section 1. Forfeiture – If a member of the Pawnee Business Council fails or refuses to attend two (2) regular or special meetings per year from the date of oath of office, unless excused by the Pawnee Business Council President for illness or other causes for which the member cannot be held responsible, his/her office shall be declared forfeited by a resolution of the Pawnee Business Council and the vacancy shall be filled.

Section 2. Recall – Upon receipt of a petition signed by **twenty five per cent (25%)** of the number of voters who voted in the last regular election call for the recall of any member of the Pawnee Business Council, it shall be the duty of the election commission to call and conduct within thirty (30) days an election on such recall. Recall shall be effective only if a majority of those voting shall vote in favor of such recall and that at least 50 per cent (50%) + one (1) of the number voting in the previous election vote in the recall election. Once a member has faced a recall attempt, no further recall action shall be brought against that member until at least twelve (12) months have passed. No member of the Pawnee Business Council shall be subject to recall action within the first six (6) months of that member's term.

Section 3. Suspension:

- (i) A Pawnee Business Council member shall be suspended from the Business Council without compensation when:
 - (a) charged with a criminal offense, and
 - (b) that offense would be cause for removal as defined in Section 4.iv.(a), and
 - (c) the charging jurisdiction guarantees similar civil rights and due process as is guaranteed within the Pawnee Nation.
- (ii) The suspension shall be effective from the date of the filing of the charges until dismissed.
- (iii) It is the duty of the defendant Business Council Member to timely notify the Business Council and the Attorney General of the charges.
- (iv) A suspended Business Council Member is excused from attending meetings and other official duty during the suspension.
- (v) Any vote cast or other official action taken after such charges have been filed shall be valid, but taking such official action while under suspension shall constitute the crime of unofficial misconduct.
- (vi) The Business Council may by majority vote, with the subject member abstaining, lift the suspension if it finds that the requirements of paragraph (i) are not met.
- (vii) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.
- (viii) If the charges are dismissed because the defendant is found innocent, the suspension is automatically removed and all withheld compensation shall be paid without interest.

Section 4 – Removal of Pawnee Business Council Members

- (i) Removal for Cause – Pawnee Business Council members may be removed for cause by petition filed in Pawnee Nation District Court with right of appeal to the Pawnee Nation Supreme Court.
- (ii) A petition may be filed only;

- (a) by the Attorney General, or
 - (b) by Resolution of the Pawnee Business Council, or
 - (c) by any individual or individuals who deposits \$10,000 in cash or bond with the court clerk.
- (iii) Conviction is defined as a final conviction or a plea of no contest or guilty, whether or not dismissed, pardoned or expunged, and irrespective of whether it is denominated a felony, misdemeanor, or otherwise.
- (iv) Cause if defined as:
- (a) conviction of any of the following offenses in any legitimate governmental jurisdiction:
 - A. Fraud
 - 1. Making false representation
 - 2. Knowledge of such false representation by the perpetrator
 - 3. Reliance on the false representation by the person defrauded
 - 4. An intent to defraud
 - 5. The actual act of committing fraud
 - 6. Passing bad checks
 - 7. Knowingly possessing stolen property
 - B. Evil Intent
 - 1. Arson
 - 2. Blackmail
 - 3. Embezzlement
 - 4. Extortion
 - 5. False pretenses
 - 6. Forgery
 - 7. Fraud
 - 8. Larceny (grand or petty)
 - C. Crimes against property
 - 1. Malicious destruction of property
 - 2. Receiving stolen goods (with guilty knowledge)
 - 3. Robbery
 - 4. Theft (when it involved the intention of permanent taking)
 - 5. Transporting stolen property (with guilty knowledge)
 - D. Crimes against Governmental authority
 - 1. Bribery
 - 2. Counterfeiting
 - 3. Fraud against revenue or other governmental functions
 - 4. Mail fraud
 - 5. Perjury
 - 6. Harboring a fugitive from justice (with guilty knowledge)
 - 7. Tax evasion (willful)
 - 8. Carry a concealed weapon
 - 9. Desertion from the Armed Forces
 - 10. Dishonorable Discharge from the Armed Services
 - 11. Failure to report for military induction
 - 12. Drunk driving
 - 13. Habitual drunkenness
 - 14. Escape from prison
 - 15. Gambling violations
 - 16. Controlled Dangerous Substances violations

17. Liquor violations

18. Vagrancy

E. Crimes committed against person, family relationship, and sexual morality

1. Abandonment of a minor child (if willful and resulting in the destitution of the child)

2. Assault

a. Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm

b. Assault with a dangerous or deadly weapon

3. Contributing to the delinquency of a minor

4. Gross indecency

5. Incest

6. Kidnapping

7. Lewdness

8. Manslaughter

a. Voluntary

b. Involuntary, where the statute requires proof of recklessness

9. Mayhem

10. Murder

11. Pandering

12. Prostitution

13. Rape (including "Statutory rape")

14. Sodomy

15. Libel/Slander

16. Mailing an obscene letter

F. Crimes attempting, aiding and abetting, accessories, and conspiracy

1. an attempt to commit a crime listed in this Section,

2. Aiding and abetting in the commission of a crime listed in this Section,

3. Being an accessory (before or after the fact) in the commission of a crime listed in this Section,

4. Taking part in conspiracy (or attempting to take part in a conspiracy) to commit a crime listed in this Section.

(b) Willful neglect or refusal to fulfill statutory duties.

(c) Intentional conduct reflecting very negatively on the dignity and integrity of the tribal government.

(v) Court Review

(a) The District Court shall review the removal petition in a new trial. The

Judge must hold an initial hearing within 30 days and resolve the case within 90 days. The petitioner must prove the facts by clear and convincing evidence. Any party to the case shall have a right to appeal.

(b) The defending Council member may be represented by Counsel. If the Court denies the petition then the defending Council member shall be awarded costs and attorney fees not to exceed \$10,000.00.

- (c) If the petition was filed by Business Council or the Attorney General the cost of attorney fees shall be paid from tribal funds. If the petition was filed by an individual the cost of attorney fees shall be paid from the deposit. An exonerated Council member charged under paragraph (iv) (b) or (iv) (c) of this Section shall not be charged again under such paragraph until more than twelve months have passed since the previous petition was filed.
- (d) If a petition filed by individual(s) is successful then their \$10,000 deposit shall be refunded. If the attorney fees of a winning defendant are less than \$10,000 then the balance shall be refunded.

ARTICLE VIII-NASHARO COUNCIL

Section 1. The Nasharo Council shall consist of eight (8) members with a quorum of five (5) to transact business. Each band shall have two (2) representatives on the Nasharo Council selected by the members of the tribal bands, Chaui, Kitkehahki, Pitahawirata and Skidi. The Nasharo Council shall have the right to review all acts of the Pawnee Business Council regarding the Pawnee Nation of Oklahoma membership and Pawnee Nation of Oklahoma claims or rights growing out of treaties between the Pawnee Nation of Oklahoma and the United States, provided:

- (i) Such acts of the Pawnee Business Council shall be valid and valid unless formally disapproved by the Nasharo Council within thirty (30) days after such acts are referred to the latter Council;
- (ii) Where such are disapproved by the Nasharo Council, the Pawnee Business Council may submit them to a referendum of the Pawnee Nation of Oklahoma and they shall be valid and effective if approved by a majority vote of the adult members voting in person or by absentee ballot; provided, that, at least fifty (50) of those qualified to vote shall cast ballots in such election.

Section 2. The Bands of the Pawnee Nation of Oklahoma shall elect their respective representative under rules and regulations prescribed by the Chiefs of each Band. The representatives selected shall serve until the next regular selection of members of the Nasharo Council.

Section 3. Vacancies in the membership of the Nasharo Council shall be filled under rules and regulations prescribed by the Nasharo Council.

Section 4. The Nasharo Council shall have the power to establish its own offices and to designate its own officers, to fix its own meeting days, and to adopt its own rules of procedure; provided a quorum is present to transact business. Records of the proceedings of this body shall be kept.

Section 5. All members of the Nasharo Council shall attend tribal constitution classes as prescribed by the Pawnee Business Council.

ARTICLE IX- COURTS

Section 1. Establishment of Authority - The judicial power of the Pawnee Nation of Oklahoma shall be vested in the current Pawnee Nation Courts established by Resolution 93-65 and shall consist of five Justices and at least one trial court, known as the District Court, and additional courts as may be established by tribal law. The courts shall be a separate branch of government.

Section 2. Jurisdiction - The Courts of the Pawnee Nation of Oklahoma shall be courts of general jurisdiction and shall further have jurisdiction in all cases arising under the constitution, laws, and treaties of the Pawnee Nation of

Oklahoma. The Supreme Court shall have original jurisdiction in only such cases as may be provided by law, and shall have appellate jurisdiction in all other cases.

Section 3. Selection of Judicial Officers – The Justices of the Supreme Court and Judges of District Courts shall be selected by a majority vote of the Business Council. Justices and Judges may by Supreme Court rule assume the duties of a member of the other court to hear a specific case in which the regular Justices or Judges are disqualified or are otherwise unable to perform their duty as to the case.

Section 4. Term of Office – The Justices and Judges of the Pawnee Nation of Oklahoma shall serve six year terms beginning at the date of their confirmation in office and continuing if reconfirmed or until their successor shall be duly confirmed and installed.

Section 5. Removal – Justices and Judges of the Pawnee nation of Oklahoma may be removed from office only by a majority of the other active Justices and Judges sitting together upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or for cause as defined in Section 4, D. In no case may a judicial officer be removed from office because of his decision in any case before the Court.

Section 6. Judicial Review – The Courts are specifically authorized to review, in any case properly before them, the actions of the Business Council, or any other officers, agents, or employees of the government of the Pawnee Nation of Oklahoma to determine whether those actions are prohibited by Federal law, this constitution or the laws of the Pawnee Nation of Oklahoma. If the action complained of is outside the scope of authority delegated to entity in question, or if a proper authority is being exercised in a prohibited manner, the Court may enter injunction or other proper equitable relief or declare the action unconstitutional and void as justice may require.

Section 7. Effective date, Interim Provision – This article shall be effective upon approval in accord with Article X. The Business Council shall thereafter have the authority to enact such laws as may be necessary for the full and proper functioning of the Courts of the Pawnee Nation of Oklahoma not inconsistent with this article. All current laws regarding courts shall remain in effect and as amended to the extent that they do not conflict with this Constitution.

Section 8. Court Funding – The Court shall be funded in a reasonable amount in the annual budget.

1. Court funding shall be equal to or exceed funding amounts for fiscal year 2007.
2. In the event that overall funding shortfalls require budget cuts, the court budget may be reduced but proportionately not more than any other department.

ARTICLE X-BILL OF RIGHTS

Section 1. All members of the Pawnee Nation shall enjoy without hindrance freedom of worship, conscience, speech, press, assembly, and association.

Section 2. The Constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the Pawnee Nation as citizens of the State of Oklahoma or of the United States. The Indian Civil Rights Acts of 1968 (ICRA) and rights guaranteed under this Act is applicable to the tribal members and other persons within tribal jurisdiction.

Section 3. The individual property rights of any member of the Pawnee Nation shall not be altered, abridged or otherwise affected by the provisions of this Constitution and By-Laws without the consent of such individual member.

ARTICLE XI-AMENDMENTS

Amendments to this Constitution may be proposed by a majority vote of the Pawnee Business Council or by a petition signed by at least fifty (50) of the adult members of the Pawnee Nation of Oklahoma.

This Constitution may be amended by a majority vote of the qualified voters of the Pawnee Nation voting in an election called for that purpose by the Secretary of Interior and conducted pursuant to the rules and regulations of the Pawnee Nation of Oklahoma. Provided, that, at least fifty (50) of those qualified to vote shall cast ballots in such election. The amendment shall become effective when approved by the Secretary of Interior, so long as such approval is required by Federal law, and ratified by the adult members of the Nation.

ARTICLE XII-PLACE OF MEETINGS

Unless some other location in the Pawnee Nation of Oklahoma jurisdiction is designated in the notice, all meetings of the Pawnee Business Council and of the Nasharo Council shall be held at the Pawnee Nation Reserve at Pawnee, Oklahoma.

ARTICLE XIII-ADOPTION

This Constitution when approved by the Secretary of Interior, shall be submitted to referendum vote of the adult members of the Nation, and shall become effective if approved by two-thirds vote of the adult members voting in person, provided that at least fifty votes are cast.

ARTICLE XIV-SAVINGS CLAUSE

All enactments of the Nation adopted before the effective date of this Constitution shall continue in effect to the extent to that they are not inconsistent with this constitution.

ARTICLE XV-SEVERABILITY

If any part of this Constitution is held by the Federal Court to be invalid or contrary to the U.S. Constitution or Federal law, the remainder shall continue to be in full force and effect.

CERTIFICATE OF APPROVAL

I, NANCY JEMISON, Acting Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) and delegated to me by Secretarial Order No. 3150 as extended by Secretarial Order No. 3177, as amended, do hereby approve the Constitution of the Pawnee Nation of Oklahoma. This Constitution is effective on the date ratified by the adult members of the Pawnee Tribe of Oklahoma; PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

NANCY JEMISON
Acting Deputy Commissioner
Of Indian Affairs

Washington, D.C.
Date: April 27, 1998

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE I

TRIBAL COURTS

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October 1, 1993

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Section 1. Authorization

There is hereby established, ordained, and activated pursuant to the Constitution of the Pawnee Tribe of Oklahoma a Judicial Branch of the Government of the Pawnee Tribe of Oklahoma with a lower Court known as the District Court and an upper Court known as the Supreme Court.

Section 2. Definitions

The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

- (a) "Clerk" shall mean the Clerk of the Court.
- (b) "Code" shall mean the Statutory laws of the Tribe.
- (c) "Constitution" shall mean the Constitution of the Tribe.
- (d) "District Court" shall mean the lower or general trial Court operating within the jurisdiction of the Tribe.
- (e) "He", "him", and "his" shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.
- (f) "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Tribe.
- (g) "Supreme Court" shall mean the Court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

Section 3. Territorial Jurisdiction

The Territorial Jurisdiction of the Courts shall extend to all territory described as Indian Country, within the meaning of Section

1151 of Title 18 of the United States Code, over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of an Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

Section 4. Civil jurisdiction

The Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

Section 5. Criminal jurisdiction

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

Section 6. Probate Jurisdiction

To the extent permitted by federal law the Courts shall have probate jurisdiction over all the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

Section 7. Juvenile Jurisdiction

The Juvenile Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

Section 8. Law to Be Applied

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law heretofore or hereafter adopted by the Tribe. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usage's, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of federal Regulations, except those Sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, nor State law shall be binding upon the Court unless specifically incorporated into tribal law by Tribal Statute or be a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law.

Section 9. Amendments

The Tribal legislative body shall have the authority to alter, amend, or repeal any provision of this Act or to add new sections to this Act in its discretion.

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TRIBAL COURTS

CHAPTER ONE

DISTRICT COURT

Section 101 Judges of the District Court

The District Court shall consist of the Chief Judge, and such District Judges, Special Judges, and Magistrates as may be appointed according to law.

Section 102. Minimum Qualifications of Judge of the District Court

A Judge shall, in order of preference:

(a) be an attorney who is

(1) an enrolled member of the Pawnee Tribe, actually domiciled within the territorial jurisdiction of the Tribe, or

(2) the parent, child, or spouse of an enrolled member of the Pawnee Tribe, domiciled within the territorial jurisdiction of the Tribe, or

(3) a non-member Indian domiciled within the territorial jurisdiction of the Pawnee Tribe, or

(4) an Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; or

(5) an attorney who is a non-Indian, or

(6) a lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five years, or

(b) have demonstrated moral integrity and fairness in his business, public and private life, and

(c) have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two years next preceding his appointment. The two year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.

(d) have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.

(e) be not less than twenty-five (25) years of age.

(f) not be a member of the Tribal Legislative Body, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective Tribal Office, may be confirmed as a Judge subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(g) if less than fifty (50) years of age, have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two years of previous experience as a Judicial Officer for some recognized Court.

Section 103. Manner of Selection of Justices and Judges

Justices and Judges of the Tribe shall be nominated by the Chief Executive Officer and confirmed by the Tribal Legislative Body upon a vacancy occurring in a judicial office in the following manner:

(a) Within thirty days after a vacancy occurs the Chief Executive-Officer shall cause a. notice of the vacancy stating the minimum qualifications, salary, and any other pertinent information to be published once in the Tribal newspaper and once each week for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. Copies of the notice shall be posted at the Tribal Office, the nearest Agency of the Bureau of Indian Affairs,

Chief Executive Officer shall direct. The notice shall direct that inquires, nominations and applications be directed to the Tribal Secretary who shall keep a permanent record of responses to such notices.

(b) No sooner than twenty (20), nor more than thirty (30) days after the date on which last required notice was published or posted, the Secretary shall deliver the names and files of all persons nominated or applying for the Judicial Office to the Chief Executive Officer, who shall select no more than three qualified candidates for each vacant Judicial Office and place consideration of the candidate(s) he nominates on the agenda of the next regular or special meeting of the Tribal Legislative Body.

(c) The Tribal Legislative Body shall review the qualifications of the nominees, and may interview nominees at their meetings at their discretion. In making a selection, the Tribal Legislative Body shall give preference to those candidates who:

(1) have more formal education and experience in the legal field.

(2) by written examination conducted by the Supreme Court or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Tribe.

(3) have demonstrated decision making ability.

(d) If the nominee for the Judicial Office is confirmed by the Tribal Legislative Body, the nominee shall be sworn into office by the Chief Justice, or the next ranking available Justice of the Supreme Court.

(e) If the nominee(s) is not confirmed, the Chief Executive Officer shall either republish the notice and establish a new list of eligible candidates, or he may reconsider the candidates on the list gathered from the previous notice. The Chief Executive Officer nomination - Legislative confirmation process shall continue until some nominee be confirmed.

(f) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Secretary not less than sixty days prior to the expiration of his term, to be considered for confirmation to a new term at the next meeting of the Tribal Legislative Body at which a quorum is present. If the Legislature, a quorum being present, does not confirm the outgoing officer, they shall so declare and direct the Chief Executive Officer to begin the selection process. The outgoing judicial officer's term shall expire upon confirmation of the new Justice of Judge.

Section 104. Term of Office

All Judges of the District Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

Section 105. Oath of Office

Before assuming office each Judge, Special Judge, and Magistrate shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court as soon after confirmation as may be practical.

Section 106. Duties and Powers of Judges

All Judges of the District Court, and Special Judges in cases within their authority, shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so the Court shall:

(a) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court regulating conduct in the District Court, for the orderly and

efficient administration of justice. Such rules must be filed in the office of the Tribal Secretary and the District Court Clerk before becoming effective.

- (b) Hold Court regularly at a designated time and place.
- (c) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (d) Hear and decide all cases properly brought before the Court.
- (e) Enter all appropriate orders and judgments.
- (f) Issue all appropriate warrants and subpoenas
- (g) Keep all Court and other records as may be required.
- (h) Perform the duties of the Clerk in his absence.
- (i) Subject to the confirmation of the Supreme Court, to appoint such Magistrates as may be necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters as may be determined by Rule of the Supreme Court. Magistrates shall meet the minimum qualifications for Judges of the District Court except that Section 102(a) and (g) shall not apply.
- (j) Unless a coroner is appointed in accordance with the provisions of the Tribal Code, any Judge designated by the Chief Judge shall have the authority to perform the duties of a coroner.

Section 107. Trial Panel

In any case to be tried by a Trial Panel, the Chief Judge shall assign by random lot at least three Judges to try the case, one of whom shall be designated as the Presiding Judge. The Presiding Judge assigned to the case shall have the duty before, during and after trial of making procedural and evidentiary rulings on issues raised by the case, after conferring with the other assigned Judges when he feels it necessary to do so. All assigned Judges shall have an equal vote on the merits of each case. The panel's deliberations on the merits shall be held in strict privacy and no one shall disclose anything said during the deliberation. A majority of the assigned Judges may take action on the merits of any matter, but no one shall reveal the vote of any of the Judges of the panel or the final numerical vote of the panel, the decision should simply reflect that it is the decision of the Court.

Section 108. Special Appointments

Whenever, due to vacancies in office, disqualification of Judges, or other cause, a trial panel cannot be convened from the available Judges, or an additional Judicial Officer is needed to efficiently dispense with the business of the District Court, due to vacancies in office, disqualification of Judges, or other cause, the Supreme Court may designate by Court Order one or more duly qualified magistrates or Justices to sit on the trial panel, or may make one or more special appointments from among the members of the Bar of the Court to act as a Special Judge to hear specific named cases, or cases filed prior to the date a trial panel of regular Judges can be convened, the vacancy is filled, or the Special Judge is no longer needed. No special procedure need be followed in making such appointments and such Special Judges need not meet the qualification of Section 102 (a) or (g) of this Act. Whenever a Justice of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund in such reasonable amounts as the Supreme Court shall order.

Section 109. Compensation of judges

(a) The compensation of all Judges of the District Court shall be set by appropriate legislation of the Tribal Legislative Body. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the Tribal Legislative from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Judge or Magistrate of the District Court, and shall in return have control over the compensation of such Judges or Magistrate. In such situations the Tribal Legislative body shall recommend to the funding party the compensation of District Judges and Magistrates.

(c) Subsection (a) of this Section shall not apply to Magistrates. The compensation of all Magistrates shall be set by order of the Supreme Court from available appropriate funds, or from funds made available pursuant to an agreement entered into according to Subsection (b) of this Section.

Section 110. Removal of Judges

(a) The Judges of the District Court shall be removed only for cause by the Tribal Legislative Body upon the recommendation of the Supreme court. Neither the Supreme Court, nor the Tribal Legislative Body may remove a Judge of the District Court independently, but the Supreme Court must first recommend the removal, and the Tribal Legislative Body must then concur. The term "cause" shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Canons of Judicial Ethics promulgated by the American Bar Association.

(b) Magistrates shall serve at the pleasure of the District Court.

Section 111. Disqualifications, Conflict of Interest

(a) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother; brother; sister; grandfather; grandmother; or any other legal dependent. A Judge should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party of interest in such case or the Judge may arise the question of conflict of interest. Upon decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.

(c) Any Judge otherwise disqualified because he is related to one or more of the parties in one of the relationships enumerated in subsection (a) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

Section 112. Decisions

(a) Each decision of the District Court at trial shall be recorded on a form approved by the Supreme Court for such purpose, or embodied in written findings of fact and conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.

(b) In a case tried to a Judicial Panel, the Presiding Judge shall sign such form or decision indicating that the decision is the true decision of a majority of the trial panel on the case whether or not the Presiding Judge agreed with that decision.

(c) The decision four or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case.

Section 113. Records

The District Court shall be a Court of Record. To preserve such records:

(a) In all Court proceedings, the Court Reporter, which may be the Clerk in the absence of an official Court Reporter, shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the Reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record. Court Reporters may be licensed by the Supreme Court, and shall be allowed such fees from the Parties for their services as shall be set by Rule of the Supreme Court

(b) To preserve the integrity of the electronic record, the Reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an Order of a Tribal Judge or Justice.

(c) The Clerk shall keep in a file bearing the case name and number every written document filed in the case.

(d) All Court records shall be public records except as otherwise provided by law.

(e) After five (5) years, court records except judgments, appearance, and other dockets may be reproduced on computer tape or disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.

(f) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and the public.

Section 114. Files

(a) Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(b) Any persons desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, or a Judge and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a Judge or a licensed advocate, attorney or the Clerk taking a file to a Judge in his chambers or a courtroom, take a file from the Clerk's office.

(c) A copy of any document contained in such a file may be obtained from the Clerk by any person for a reasonable copy fee, to be set by rule of the Supreme Court. The Clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office. The Supreme Court by rule may provide for such certification.

Section 115. Motion Day

Unless conditions make it impractical, the District Court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the Judge at any time or place, and on such notice, if any, as he considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Section 116 -119. Reserved

Section 120. Practice Before the Tribal Court

(a) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.

(b) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Courts.

CHAPTER TWO

SUPREME COURT

Section 201. General Provisions

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District Court, appeals of other orders of the District Court subject to interlocutory appeal by law, and such original actions as may be provided by tribal law, and shall render its decision in writing to the parties of interest, file a copy thereof in the Supreme Court Clerk's office and the Tribal Secretary's office, and, at the time of filing, submit a copy to the official reporter of the decisions of the Court. The decision of the Supreme Court shall be final and binding upon the parties.

Section 202. Composition of the Supreme Court

The Supreme Court shall consist of one (1) Chief Justice, and four (4) Associate Justices.

Section 203. Minimum Qualifications of Justices

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

(a) be either

- (1) an enrolled member of the Tribe, or
- (2) the parent, child, or spouse of an enrolled member of the Tribe, or
- (3) actually domiciled within the territorial jurisdiction of the Tribe, or
- (4) an attorney, or

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(5) a lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of seven years, or

(6) An Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; and

(b) have demonstrated moral integrity and fairness in his business, public and private life, and

(c) have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years next preceding his appointment. The five year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.

(d) have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.

(e) be not less than thirty (30) years of age.

(f) not be a member of the Tribal Legislative Body, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective Tribal Office, may be confirmed as a Justice subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(g) if less than fifty (50) years of age, have completed at least sixty (60) semester credit hours at an accredited college or university, or at least four years of previous experiences as a Judicial Officer for some recognized Court.

Section 204. Selection of justices

Justices shall be selected in accordance with the provisions of Section 103 of this Act.

Section 205. Term of Office

All Justices of the Supreme Court shall serve eight (8) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. The first appointments of Justices hereunder shall be for terms which may vary in order to provide for staggered terms of office.

Section 206. Oath of Office

Before assuming office each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice, the Chief Executive Officer, or the ranking available Justice of the Court.

Section 207. Duties and Powers of Justices

All Justices of the Supreme Court, unless disqualified for conflict of interest or other cause, shall participate in the deliberations of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Supreme Court. In doing so the Supreme Court shall:

(a) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Courts to provide for the orderly and efficient administration of justice and the administration of the Courts. Such rules shall determine, where not otherwise provided by

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law, what actions be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court and the Tribal Secretary.

(b) Hear appeals from the District Court at a designated time and place.

(c) Enter all appropriate orders and judgments.

(d) Keep all appropriate records as may be required.

(e) Perform any and all other duties as may be required for the operation of the Supreme Court and the District Court.

(f) Supervise the actions of the District Court and all Clerks, Reporters, Bailiffs, and other officers of the Courts.

(g) Perform any of the duties and powers of a District Judge in appropriate cases.

Section 208. Compensation of Justices

(a) The compensation of all Justices of the Supreme Court shall be set by legislation of the Tribal Legislative Body. No Justice shall have his compensation reduced during this term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the Tribal Legislative from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Justice of the Supreme Court, and shall in return have control over the compensation of such Justice. In such situations the Tribal Legislative Body shall recommend to the funding party the compensation of Supreme Court Justices.

Section 209. Removal of Justices

Justices of the Supreme Court may not be removed from office except upon final conviction of a felony, or an offense punishable by banishment, or an offense involving moral turpitude, in which case the Supreme Court shall enter its order disbaring and expelling such Justice from the Court and declaring that Judicial Office vacant.

Section 210. Disqualifications, Conflict of Interest

(a) No Justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party in interest in such case or the Justice may raise the question of conflict of interest. Upon decision by the Justice concerned or the Supreme Court that qualification is appropriate, a Judge, Magistrate, or Special Justice may be appointed to sit on the Supreme Court to hear the matter before the Court.

(c) Any Justice related to one or more of the parties in one of the relationships enumerated in Subsection (a) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have the interested Justice disqualified from the case, and consent in writing filed in the case, or upon the record in open Court to the conflict of interest. Normally, the Justice knowing of the conflict of interest should simply file an order recusing himself from the action and stating his relationship with the parties. Thereafter, if the parties consent to that Justice hearing the action, they should file their written consent for such Justice to continue in the cause. If all parties file such consents, the Justice may then enter his order withdrawing the his recusation on grounds of the consents filed. A consent to the withdrawal of a Justices recusation may not be withdrawn.

Section 211. Decisions

(a) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties in interest, the District Court in appeal cases, filed in the Supreme Court Clerk's Office and the Tribal Secretary's office, transmitted to the official reporter of the decisions of the Court, and recorded on a form approved by the Supreme Court for such purpose. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties before the Court, the issues presented of appeal or the substance of the complaint in an action within the court's original jurisdiction, the relevant facts upon which the decision on appeal was made or as found by the Court to be true in an original action, the Court's decision, and the legal principals and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.

(b) Each Justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.

(c) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

Section 212. Rules of the Court

(a) The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme and District Courts not inconsistent with Tribal Ordinance or the Tribal Constitution. Such rules shall govern the conduct, demeanor, and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function more efficiently.

(b) The Rules shall be filed in the Court Clerk's office, the office the Tribal Secretary, and delivered to the official reporter of decisions of the Court.

(c) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

Section 213. Special Appointments

Whenever, due to vacancies in office, disqualification of Justices, or other cause, a minimum of three (3) Justices to hear and decide the merits of a case before the Court cannot be convened from the available Justices, the Court, including any disqualified Justices, may designate by Court Order one or more duly qualified Judges of the District Court or Magistrates, not having served on the trial of the case, or some member of the Bar of the Court to sit on the Supreme Court as a Special Justice for purposes of the appeal or the original action, or request the Tribal Legislative Body to make one or more special appointments to hear specific named cases, or cases filed prior to the date a minimum of three (3) Justices can be convened on such cases. No special procedure need be followed in making such appointments and special Justices need not meet the qualifications of Section 102 (a) and (g) of this Act, although special appointments by the Tribal Legislative Body shall be made by formal action with notice to the parties in a case where appropriate.

Section 214. Supreme Court's Action on Appeals

In any appeal properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions as shall be just.

Section 215. Terms of the Court

The regular term of the Court shall commence on the first Monday in October of each year, and upon that date the Supreme Court shall convene in its Courtroom for the purpose of disposing of the actions and other business before the Court. The term shall

continue until such time as the Court determines that its business is properly disposed of and the term shall then be declared completed. Special terms may be convened at any time upon the call of the Chief Justice for the purpose of dispensing with pressing matters which may not be justly delayed until the regular term of the Court.

Section 216. Court Fund

There is hereby authorized to be maintained by the Clerk under the supervision of the Court, a fund to be known as the "Court Fund" into which shall be deposited all fines, fees, penalties, costs, and other moneys authorized or required by law to be paid to the Courts which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the court and used exclusively for the purchase of supplies, materials, and personal property for the use of the Courts, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries of regular Judges or Justices of the District or Supreme Courts.

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CHAPTER THREE

COURT CT.FRK

Section 301. Establishment

There is hereby established a Court Clerk's Office to, be administered by one (1) Court Clerk and such Deputy Court Clerks as may be necessary. The Court Clerk shall be appointed by the Supreme Court, and Deputy Court Clerks shall be appointed by the Court Clerk subject to the approval of the Supreme Court.

Section 302. Clerk to Serve Supreme and District Courts

Until such time as the Supreme Court determines that separate Clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the Supreme Court". When serving the District Court, the Clerk's title shall be "Clerk of the District Court".

Section 303. Clerk as Department Director

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Court Clerk shall serve as the Court Administrator and shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody, upkeep and maintenance of the records, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk of the Court -by law or Court rule. --

Section 304. Powers and Duties

The Court Clerk shall have the following powers and duties:

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(a) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty of function authorized by law.

(b) Subject to the approval of the Supreme Court, to supervise and direct the hiring, firing, and work of all deputy court clerks and other employees in his office.

(c) To collect all fines, fees, and costs authorized or required by law to be paid to the Courts, to receipt therefore, and to deliver them to the Tribal Treasurer for deposit in the Court fund.

(d) To accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the Clerk is authorized to maintain a bank checking account subject to the oversight of the Supreme Court and to deposit and withdraw funds therefrom. This account shall be audited at least once each year by the Tribal Accounting Department or an independent Certified Public Accountant, and the Clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Supreme Court shall direct.

(e) To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Court.

(f) To provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

(g) To provide stenographic and clerical services to the Court and the Attorney General or Prosecuting Attorney when requested.

(h) To act as librarian, and to keep and maintain the Court's law library.

(j) To undertake all duties assigned or delegated to the Clerk's office by Tribal law or Court Rule.

Section 305. Seal

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

Section 306. Certification of True Copies

The Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Court Clerk's office, and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing
_____ is a true, accurate and exact
copy of the original of same as it remains of record
on file in my office.

Clerk of the District Court [or Supreme Court]

[NAME OF TRIBE]

Date

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

Section 307. Courts Always Open

The District and Supreme Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

Section 308. Trials and Hearings — Orders in Chambers

All trials upon the merits, except as specifically provided by law and in children's cases shall be conducted in open Court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a Judge in chambers, without the attendance of the clerk or other court officials in any place either within or without the tribal jurisdiction; but no hearing, other than one ex parte, shall be conducted outside the tribal jurisdiction without the consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Tribe has entered into an agreement with another government for the sharing of judicial officers and courtroom space in which case the Court may sit in any place authorized by such agreement.

Section 309. Clerk's Office and Orders by the Clerk

The Clerk's office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the Clerk's office for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the Clerk, unless the Civil Procedure Act

requires previous approval by the Court, but his action may be suspended or altered or rescinded by the Court upon cause shown.

Section 310. Notice of Orders or judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make note in the docket of the mailing. Such mailing is sufficient notice for all purpose for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

Section 311. Books and Records Kept by the Clerk and Entries Therein

(a) The Clerk shall keep a book known as the "Civil Docket" of such form and style as may be prescribed by the Justices of the Supreme Court, and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the Clerk shall enter the word "jury" on the folio assigned to that action. When in an action trial by judicial panel has been properly demanded or ordered, the Clerk shall enter the words "judicial panel" on the folio assigned to that action.

(b) In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action docket of the Supreme Court. The appeals and original action dockets of the Supreme Court may be combined if the Supreme Court shall so direct.

(c) The Clerk shall also keep such other books and records as may be required from time to time by law or the Supreme Court.

Section 312. Stenographic Report or Transcript as Evidence

(a) Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(b) Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the Court Clerk with the records of the trial, or by some other person duly certified as correct by the Court Clerk, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his direction a transcript of the recording.

Section 313. Judgment Docket

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the Clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

Section 314. Execution Docket

In the execution docket the Clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The Clerk shall also record in full the return of the Chief of the Tribal Police to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

Section 315. Clerk May Collect judgment and. Costs

Where there is no execution outstanding, the Clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution, and the Clerk shall be liable to be amerced in the same manner and amount as the Chief of the Tribal Police for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

Section 316. Clerks to Issue Writs and Orders

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the Clerk. Except for summons and subpoena, the Clerk shall not issue any such writ, order, or process except upon order or allowance of the Court unless specific authorization for his issuing such document is found in the Tribal Code.

Section 317. Clerk to File and Preserve Papers

It is the duty of the Clerk to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding.

Section 318. Each Case to be Kept Separate.

The papers in each case shall be kept in a separate file marked with the title and number of the case.

Section 319 Indorsements

He shall indorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

Section 320. Entry on Return of Summons

He shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

Section 321. Material for Record

The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court, but if the items of an account, or the copies of papers attached to the pleadings, the voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for the purpose of appeal.

Section 322. Memorializing Record

It is the duty of the Court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their

rendition. To aid in the performance of this duty, the Court may direct counsel or the Court Clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or, the Court may direct the Clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf.

Section 323. Clerk to Keep Court Records; Books and Papers — Statistical and Other Information

The Clerk shall keep the records and books and papers appertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him by Tribal statute, order of the Court, or Court rule. The Clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Supreme Court and to the Tribal Legislative Body, such statistical and other information as the Supreme Court or the Tribal Legislative Body may require, including, but without being limited to, the number and classification of cases:

- (a) Filed with the Court.
- (b) Disposed of by the Court, and the manner of such disposition.
- (c) The number of cases pending before the Court.

Section 324. Applicable to District and Supreme Court

The provisions of this Chapter shall apply to the Clerk of the Tribal District Court and the Tribal Supreme Court insofar as they may be applicable.

Section 325. Bonds

The Court Clerk and each deputy Clerk shall be bonded by a position fidelity bond to guarantee the proper performance of their duties and their fidelity in the handling of the money and other

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property coming into their hands in the performance of their duties. The amount of such bond shall be set by the Tribal Legislative Body and the cost thereof shall be paid from Tribal funds.

CHAPTER FOUR

CHIEF OF THE TRIBAL POLICE — PROCESS

Section 401. Style of Process

The style of all process shall be "[The [NAME OF TRIBE] to:" and all process shall be under the seal of the Court Clerk and shall be signed by the Court Clerk, and dated the day it is issued.

Section 402. Appointment of Substitute for Tribal Police Chief

The Court or a Judge thereof, or any Clerk in the absence of the Judge and upon his oral or written order, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the Chief of the Tribal Police has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the Chief of the Tribal Police for similar services.

Section 403. Tribal Police Chief to Indorse Time of Receipt on Process

The Chief of the Tribal Police shall indorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by him.

Section 404. Tribal Police Chief to Execute and Return Process

The Chief of the Tribal Police shall execute every summons, order or other process, and return the same as required by law, and if he fails to do so, unless he make it appear to the satisfaction of the Court that he was prevented by inevitable accident from so doing, he shall be amerced by the Court in a sum not exceeding Five Hundred

Dollars (\$500.00) upon motion and ten (10) days notice, and shall be liable to the action of any person aggrieved by such failure. Provided that whenever any party, his agent or attorney shall make and file with the Clerk of the Court an affidavit, stating that he believes that the Chief of the Tribal Police will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in Court, the Clerk shall direct the original, or other process, in such suit to the Chief Executive Officer of the Tribe or his designate other than the Chief of the Tribal Police who shall execute the same in like manner as the Chief of the Tribal Police might or ought to have done, and who shall be subject to the same penalties as the Chief of the Tribal Police if he fail to do so, unless he make it appear that he was prevented by inevitable accident from so doing, and the Chief Executive Officer or his designate other than the Chief of the Tribal Police shall perform all of the other duties of the Chief of the Tribal Police when the Tribal Police Chief shall be a party to the case, or is disqualified.

Section 405. When Bailiff or Tribal Police May Adjourn Court

If the Judge fails to attend at the time and place appointed for holding his Court, the Chief of the Tribal Police, or other person appointed by the Court as bailiff, or in the absence of either the Court Clerk, shall have power to adjourn the Court, from day to day, until the regular or assigned Judge attend or a Special Judge, or Judge pro tempore, be selected.

Section 406. Other Duties of Tribal Police Chief —
Disposition of Fees

The Chief of the Tribal Police shall exercise the powers and duties conferred and imposed upon him by the Tribal Code, Court rule, and the Common law. The Police Chief's fees allowed by the Court for the service of process and mileage shall be paid into the general miscellaneous account of the Tribal Police Department and may be transferred to another line item upon order of the Chief of the Tribal Police or used for any allowable expense or cost of the Tribal Police Department other than the payment of salaries.

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CHAPTER FIVE

BONDS AND SURETIES

Section 501. Justification of Surety

A ministerial officer whose duty it is to take security in any undertaking provided for by the Tribal Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be indorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the persons making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

Section 502. Qualifications of Surety

The surety in every undertaking provided for by the Tribal Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits himself to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this Section.

Section 503. Real Estate Mortgage as Bond

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty per cent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty per cent of the reasonable

valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty per cent valuation.

Section 504. Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits.

Section 505. False Valuation — Penalty

Any person willfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injury proximately caused thereby.

Section 506. Action by Tribe or Tribal Department — No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, Commissions, or political branches, no bond, including costs, replevin, attachment, garnishment, re-delivery, injunction bonds, appeal bonds, or other obligations of security shall be required from such party either to prosecute said suit, answer, or appeal the same. In case of an adverse decision, such costs as by law are taxable against such party shall be paid out of the miscellaneous fund or other available fund of the party under whose direction the proceedings were instituted.

Section 507. Appearance Bond — Enforcement

(a) If a bench warrant or command to enforce a Court order by body attachment is issued in a cause for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court Clerk upon order of the Court ,to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sum due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.

(b) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

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CHAPTER SIX

MISCELLANEOUS

Section 601. Deputy May Perform Official Rules

Any duty enjoined by the Tribal Code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy unless otherwise specifically stated.

Section 602. Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

Section 603. Publications in "Patent Insides"

(a) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and the Tribal Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

(b) All publications and notice required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by Subsection (a) of this Section if at least one side of such paper is printed within the legal area.

Section 604. Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his

bond or renders his sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled by reason of the delinquency.

Section 605. May be Several Action on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 606. Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 607. Payments Into Court for Minors and Incompetents

Where any amount of money not exceeding Five Hundred Dollars (\$500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the Court that such money is needed for the support of such minor or incompetent person or that it is otherwise for the best interest of such minor or incompetent person, the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the Court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order

may be made by the Court in the original cause in which the funds are credited upon the application of any interested person; and the Court may direct the Clerk of the Court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accountings as the Court may direct.

Section 608. Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered in any Court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen (18) years of age or competent to again handle his affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the Judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the Court shall direct.

Section 609. Sharing of Judicial Officers

Notwithstanding any other provision of this Act, the Tribal Legislative Body is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared

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use of magistrates, trial judges, and appellate court justices. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared judicial officers, their compensation, and required duties. When acting on behalf of the Tribe, such magistrates, judges, or justices shall have all the powers and authority vested in a Magistrate, Judge, or Justice of the Tribe. Such judicial officers may be in addition to, in lieu of, or the same as, those Magistrates, Judges, and Justices authorized by this Act.

Section 610. Sharing of Other Judicial Personnel

Notwithstanding any other provision of this Act, the Tribal Legislative Body is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared use of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and requiring duties. When acting on behalf of the District and Supreme Courts, such personnel shall have all the powers and authority of the equivalent position in the Tribal Code. Such personnel may be the same as, in addition to, or in lieu of, tribal personnel in these positions.

Section 611. Sharing of Material Resources

Notwithstanding any other provision of Tribal law, the Tribal Legislative Body is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs, other Indian Tribes, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

Section 612. Sharing of Financial Resources

Provision may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions

of the judicial system, provided, that the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribes or agencies to the funding of the Court and provide a formula therefore, and may designate any particular grant money for the use of the Court, or may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for any grant or contract funds available for the operation of the Court.

Section 613. Indians Employed in the Indian Service

All persons employed in the Indian Service shall be subject to the jurisdiction of the Court to the extent permitted by law in any civil or criminal action, but any such employee appointed by the Secretary of the Interior shall not be subject to any sentence or judgment of the Court for actions while on official duty except to the extent permitted by federal law, unless such sentence or judgment shall have been approved by the Secretary of the Interior.

Section 614. Copies of Laws

(a) The Supreme Court law library shall be provided with copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.

(b) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Tribal Attorney General to furnish an opinion on the point in question.

Section 615. Cooperation by Federal Employees

(a) No field employee of the Indian Service shall obstruct, interfere with, or control the functions of the Courts of the Tribe, of influence, or attempt to influence, interfere with, obstruct, or control

such functions in any manner except in response to a request for advice or information from the Court.

(b) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the Court upon its request in the preparation and presentation of the facts in the case, and in the proper treatment of offenders and juveniles.

Section 616. Effect of Prior Decisions of the Court

The prior decisions of the Courts acting for the Tribe shall be binding upon the parties thereto. The rules of laws stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court as in other cases.

Section 617. Judicial Review of Legislative and Executive Actions

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds that the contemplated action is authorized by the Constitution and Tribal Statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes -judicial review of the- merits of the discretionary decision of action.

Section 618. Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE II

APPELLATE PROCEDURE

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Fairfax, Oklahoma

October 1, 1993

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APPENDIX Rules Relating to Attorneys and Lay Advocates

CHAPTER ONE

APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Section 101. Appeal As Of Right — How Taken

(a) Filing the Notice Of Appeal. An appeal permitted by the laws of the Tribe as of right from the Tribal District Court to the Supreme Court of the Tribe shall be taken by filing a notice of appeal with the Clerk of the Tribal District Court within the time allowed by Section 102, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of Tribal District Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. The notice of appeal shall specify the parties to the appeal; shall designate the order, commitment, or judgment appealed from, the docket, civil, criminal, juvenile, or small claims of the Tribal District Court from which the appeal is taken, and a short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the Notice of Appeal. The Clerk of the Tribal District Court shall serve notice of the filing of an appeal by mailing a copy of the notice of appeal, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall

forthwith certify and deliver to the Clerk of the Supreme Court, for filing in the Supreme Court, a certified copy of the notice of appeal. The Clerk of the Supreme Court shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk of the Tribal District Court shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk of Tribal District Court shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal.. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the Tribal District Court, the appellant shall pay to the Clerk of the Tribal District Court, for deposit in the Court Fund, of the filing fee which shall be in such amount as may be determined by rule of the Supreme Court, except that payment of a filing fee shall not be required for an appeal by the Tribe, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, tribal officers, or tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

Section 102. Appeal As Of Right — When Taken (a)

Appeals In Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right from the Tribal District Court to the Supreme Court, the. notice of appeal required by Section 101_ shall be filed with the Clerk of the Tribal District Court within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided by statute:

(i) From an order or judgment is an action for forcible entry or forcible or unlawful detainer. Ten (10) Days;

(ii) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.

(iii) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Ninety (90) Days.

(2) Except as provided in subsection (a)(4) of this Section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.

(4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any party.

(i) for judgment notwithstanding the verdict, or

(ii) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or

(iii) to alter or amend the judgment or for a new trial,

then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new

notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The Tribal District Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 30 days after the expiration of the time prescribed by this Section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Section when it is entered compliance with the Civil Procedure Act.

(b) Appeals in Criminal Cases. In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court within 10 days after the entry of the final judgment and sentence or other order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal District Court within 10 days after the entry of the judgment or order appealed from unless a different time is specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this

subdivision when it is entered in the criminal docket pursuant to the Criminal Procedure Act. Upon a showing of excusable neglect Tribal District Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

Section 103. Interlocutory Appeals in Civil Actions

(a) Interlocutory Appeals as of Right. A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments or orders of the Tribal District Court

(1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.

(2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.

(3) An order that denies grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.

(4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.

(5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such a directing sales or other disposals of property.

(6) An order that directs the payment of money pendente lite, except where granted at an ex parte where a full

hearing will be held upon application, therefore, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite.

(7) An order that certifies or refuses to certify an action to be maintained as a class action.

(8) An order with regard to probate matters:

(i) granting, or refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship, or

(ii) admitting, or refusing to admit, a will to probate, or

(iii) against or in favor of the validity of a will or revoking the probate thereof, or

(iv) against or in favor of setting apart property, or making an allowance for a widow or child, or

(v) against or in favor of directing the partition, sale or conveyance of any interest in real property, or

(vi) settling an account of an executor, or administrator or guardian, or

(vii) refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or

(viii) refusing or allowing the release of any tax liability, or

(ix) from any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.

(3) Within 10 days after the entry of an order granting permission to appeal, the appellant shall:

(i) pay to the Clerk of the District Court the fees established by rule of the Supreme Court for the filing of appeals by permission.

(ii) file a bond for costs if required by the Supreme Court.

The Clerk of the Tribal District Court shall notify the Clerk of the Supreme Court of the payment of the fees. Upon receipt of such notice the Clerk of the Supreme Court shall enter the appeal upon the docket. The record shall be transmitted and filed as in cases of direct appeal by right. A notice of appeal need not be filed.

Section 104. Interlocutory Appeals In Criminal Actions

(a) Appeal by the Defendant. An interlocutory appeal to the Supreme Court may not be taken by the defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

(b) Appeal by the Tribe. An appeal by the Tribe to the Supreme Court may be taken from a decision or order of the Tribal Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and, after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

Section 105. Appeals by the Tribe in Criminal Actions

(a) An appeal to the Supreme Court may be taken by the Tribe from the final judgment in a criminal action in the following cases:

(1) Upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial.

(2) Upon an order of the Court arresting the judgment.

(3) Upon a question of law reserved by the Tribe,

provided, that the criminal complaint shall be reinstated and the case shall proceed in the Tribe's appeal is upheld under subsection (a)(1) of the Section, the judgment and sentence arrested shall be entered and enforced if the Tribe's appeal is upheld under subsection (a)(2) of this Section, and a defendant may not be tried against for the same offense if the Tribe's appeal is upheld under subsection (a)(3) of this Section.

(b) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with Section 108 of this Act.

Section 106. Bond For Costs On Appeal In Civil Cases

The Tribal District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Section 107(b) of this Act applies to a surety upon a bond given pursuant to this Section.

Section 107. Stay Or Injunction Pending Appeal

(a) Procedure. Application for a stay of the judgment or order of Tribal District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Tribal District Court. A motion for such relief may be made to the Supreme Court, or to a Justice thereof, but the motion shall show that application to the Tribal District Court for the relief sought is not practicable, or that the Tribal District Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons

given by the Tribal District Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the motion. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court, and normally will be considered by the entire Court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the entire Court. In cases where relief has not been previously requested in the Tribal District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal District Court for its initial determination.

(b) Bond, Proceedings Against Sureties. Relief available in the Supreme Court under this Section may be conditioned upon the filing of a bond or other appropriate security in the Tribal District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Tribal District Court and irrevocably appoints the Clerk of the Tribal District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk of the Tribal District Court with his proper and current address, and a supply of stamped, self-addressed envelopes, if he wishes copies of any papers served upon the Clerk as his agent to be mailed to him. His liability may be enforced on motion in the Tribal District Court without the necessity of an independent action. The motion and such notice of the motion as the Tribal District Court shall prescribe may be served on the Clerk of the Tribal District Court who shall forthwith mail copies to the sureties if their addresses are known.

(c) Criminal Cases. Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Act.

Section 107. Release in Criminal Cases

(a) Appeal of Order Denying Release Pending Appeal. An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence, the Tribal District Court shall state in writing the reasons for the action taken. The appeal in such matters shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a Justice thereof pending action by the entire Court may order the release of the appellant pending the appeal.

(b) Procedure. Application for release after a judgment of conviction shall be made in the first instance in the Tribal District Court. If the Tribal District Court refuses release pending appeal, or imposes conditions of release, the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court or a Justice thereof pending action by the entire Court may order the release of the appellant pending disposition of the motion.

(c) Criteria for Release. The decision as to release pending appeal shall be made in accordance with the criteria for bail established by tribal law in the Criminal Procedure Act or otherwise. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

Section 109. The Record on Appeal

(a) Composition of The Record On Appeal. The original papers and exhibits filed in the Trial District Court, the transcript or

tape recording of the proceedings, if any, and certified copy of the docket entries prepared by the Clerk of the Tribal District Court shall constitute the record on appeal in all cases.

(b) Transcript, Duty of Appellant to Order, Notice Of Partial Transcript

(1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the Tribal District Court. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (b)(1) of this Section, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days order the parts or move in the Tribal District Court for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the costs of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each original page, and an additional fee for each copy of an

original page. If a copy of a tape recording of the proceedings is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each tape copy ordered. All such fees paid on behalf of a Clerk or reporter who is employed by the Tribe and paid a salary from tribal monies shall be deposited in the Court fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal District Court to record its proceedings, but not paid from tribal funds shall be paid over to such reporter.

(c) Procedure When No Transcript Available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statements shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the Tribal District Court for settlement and approval and as settled and approved shall be included by the Clerk of the Tribal District Court in the record on appeal.

(d) Agreed Statement As The Record On Appeal. In lieu of the record on appeal as defined in subsection (a) of this section, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Tribal District Court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal District Court, and shall then be certified to the Supreme Court as the record on Appeal and transmitted to the Supreme Court Clerk's records.

(e) Correction Or Modification Of The Record. If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything, material to either party is

omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

Section 110. Transmission of Record

(a) Chief Clerk To Serve As Clerk of the Supreme Court. The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant, or, in the opinion of the Supreme court such service shall be deemed expedient.

(b) Transmission And Filing Of Record. In all cases, including juvenile and criminal actions, the Clerk in charge of the papers in that case shall, within 15 working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by rule of the Supreme Court.

(c) Completion of Record. Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the Clerk of the Supreme Court. If the transcript cannot be completed within 30 days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the shall be entered on the docket and the parties notified. In the event of the failure to file

the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the Clerk or reporter shall file it with the Clerk of the Tribal District Court and shall notify the Clerk of the Supreme Court that he has done so.

(d) Transmission of Transcript. Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Section 109(c) or (d) of this Act, the Clerk of the Tribal District Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court, shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the Tribal District court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

Section 112. Docketing The Appeal; Filing The Record

(a) Docketing The Appeal. Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to Section 110(b), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Tribal District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(b) Upon receipt of the completed record on appeal as provided in Section 110(d), the Clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

CHAPTER TWO

EXTRAORDINARY WRITS

Section 201. Mandamus or Prohibition Directed To a judge or judges

Application for a writ of mandamus or of prohibition directed to a judge or Magistrate of the Tribal District Court, or to any other subordinate agency or officer against whom an original action in mandamus or prohibition may be filed by law in the Supreme Court, shall be made by filing a petition therefore with the Clerk of the Supreme Court with proof of service on the respondent and on all parties in interest to the action in the Tribal District Court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The Clerk shall docket the petition and submit it to the Court upon payment of a docketing fee set by Court rule. In vacation, the alternative Writ may be issued by a single Justice but a peremptory writ should be issued only by a quorum of the Court. The Supreme Court may, in its discretion, remand the writ to the Tribal District Court for initial determination.

Section 202. Denial Or Order Directing Answer

If the Court is of the opinion that the writ should not be granted in any case on the facts and law stated in the petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk on the named respondents and on all other parties to the action in the Tribal District. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the named respondents do not desire to appear in the proceeding, they may so advise the Clerk and all parties by

letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceeding shall be given preference over ordinary civil cases. These writs may be used to compel a respondent to perform a required action or to refrain from exceeding his jurisdiction but may not be used to control the discretionary actions of judges, agencies, or other tribal officials.

Section 203. Other Extraordinary Writs

Application for extraordinary writs other than those provided for in Section 201 of this Chapter shall be made by petition filed with the Clerk of the Supreme Court with proof of service on the parties named as respondents.

Proceedings on such applications shall conform, so far as is practicable, to the procedure prescribed in Sections 201 and 202 of this Chapter.

Section 204. Form of Papers, Number of Copies

All papers may be typewritten. Ten copies and the original shall be filed, but the Court may direct that additional copies be furnished.

CHAPTER THREE

HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

SUBCHAPTER A

HABEAS CORPUS

Section 301. Habeas Corpus Proceedings

An application for a writ of habeas corpus shall originally be made to the Tribal District Court. If application is made to the Supreme Court, or a Justice thereof individually, the application will ordinarily be transferred to the Supreme Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal District Court denying the writ.

Section 302. Transfer Of Custody Pending Review

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Section and the Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

Section 303. Detention Or Release Pending Review Of Decision Failing To Release

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the

custody from which release is sought, or in other appropriate custody, or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court en banc.

Section 304. Detention Or Release Pending Review Of Decision Ordering Release

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order.

Section 305. Modification of Initial Order Respecting Custody

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

SUBCHAPTER B

PROCEEDINGS IN FORMA PAUPERIS

Section 311. Leave From Tribal District Court to Proceed to Supreme Court

A party to an action in the Tribal District Court who desires to proceed on appeal in forma pauperis shall file in the Tribal District Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the

motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either Court or the giving of security therefor. If the motion is denied, the Tribal District Court shall state in writing the reasons for the denial.

Section 312. Special Rule For Parties Previously Granted Permission To Proceed In Forma Pauperis

Notwithstanding the provisions of the preceding Section, a party who has been permitted to proceed in an action in the Tribal District Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Tribal District Court shall state in writing the reasons for such certification or finding.

Section 313. Remedy For Denial Of Motion By Tribal District Court

If a motion for leave to proceed on appeal in forma pauperis is denied by the Tribal District Court, or if the Tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the Clerk shall forthwith serve notice of such action. A motion for leave so to proceed may then be filed in the Supreme Court, within 30 days after service of notice of the action of the Tribal District Court. The motion shall be accompanied by a copy of the affidavit filed in the Tribal District Court, or by the affidavit prescribed by Section 311 of this Sub-chapter if no affidavit has been filed in the Tribal District Court, and by a copy of the statement of reasons given by the Tribal District Court for its action.

CHAPTER FOUR

GENERAL PROVISIONS

Section 401. Filing and Service

Filing. Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if first class mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

Section 402. Service of All Papers Required

Copies of all papers filed by any party and not required by this Act to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

Section 403. Manner Of Service

Service may be personal or by mail in any manner allowed by the Civil Procedure Act for service of motions or briefs. Personal service includes delivery of the copy to a Clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

Section 404. Proof Of Service

Papers presented for filing shall contain an acknowledgment of

service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

Section 405. Computation of Time

In computing any period of time prescribed by this Act, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to or less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Section, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or the Legislative Body of the Tribe.

Section 406. Enlargement Of Time

The Court for good cause shown may upon motion enlarge the time prescribed by this Act or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

Section 407. Additional Time after Service By Mail

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, 3 days shall be added to the prescribed period.

SUBCHAPTER A

MOTIONS AND BRIEFS

Section 411. Content, Response, and Reply to Motions

Unless another form is elsewhere prescribed by this Act, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Act governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within 7 days after service of the motion, but motions authorized by Section 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

Section 412. Determination of Motions for Procedural Orders

Notwithstanding the provisions of Section 411 of this Act as to motions generally, motions for procedural orders, including any motion under Section 406, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may by application to the Court request consideration, vacation or modification of such action.

Section 413. Power of a Single judge to Entertain Motions

In addition to the authority expressly conferred by this Act or by other Tribal law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Act may properly be sought by motion, except that a single

Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by the Court. The action of a single Justice may be reviewed by the Court.

Section 414. Form of Papers; Number of Copies

All papers relating to motions may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

Section 415. Brief of Appellant

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (a) A cover page as described in Section 429.
- (b) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (c) A statement of the issues presented for review.
- (d) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 419).
- (e) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.
- (f) A short conclusion stating the precise relief sought.

Section 416. Brief of Appellee

The brief of the appellee shall conform to the requirements of Section 415, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

Section 417. Reply Brief

The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court.

Section 418. References in Briefs to Parties

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the care," or the names of the parties.

Section 419. References in Briefs to the Record and Statutes

(a) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.

(b) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.

Section 420. Length of Briefs.

Except by permission of the Court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of contents, tables of citations and any addendum containing statutes, rules, regulations, and similar material.

Section 421. Briefs in Cases Involving Cross Appeals

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purposes of this Chapter and Sections 426, 427, and 428, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

Section 422. Briefs in Cases Involving Multiple Appellants or Appellees

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Section 423. Citation of Supplemental Authorities

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk

of the Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Section 424. Brief of an Amicus Curiae

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Tribe, the United States or an officer or agency thereof, or by another Tribe or a State, Territory or Common Wealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the Tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

Section 425. Appendix to the Briefs

Whenever the record on appeal, or the transcript is particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his brief when such is

necessary for a clear presentation of the issues raised on appeal.

Section 426. Time for Filing and Service of Briefs

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

Section 427. Number of Copies to Be Filed and Served

Ten copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall direct a lesser or greater number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

Section 428. Consequence of Failure to File Briefs

If an appellant fails to file his brief within the time provided by the Act, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

Section 429. Form of Briefs, the Appendix and Other Papers

(a) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter

must appear in at least 11 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Section may be inserted in the appendix; such pages may be informally re-numbered if necessary.

(b) If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of a intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices shall contain:

- (1) the name of the Court and the number of the case;
- (2) the title of the case;
- (3) the nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
- (4) the title of the document (e.g., Brief for Appellant, Appendix); and
- (5) the names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

Section 430. Form of Other Papers

(a) Petitions for rehearing shall be produced in a manner prescribed by Section 429.

(b) Motions and other papers may be produced in a like

manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

(c) A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

SUBCHAPTER B

ARGUMENT

Section 441. Prehearing Conference

The Court may direct the attorneys for the parties to appear before the Court or a Justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court of Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Section 442. Oral Argument in General

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:

- (a) the appeal is frivolous; or

(b) the dispositive issue or set of issues has been recently authoritatively decided; or

(c) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Section 443. Notice of Argument; Postponement

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing

Section 444. Order and Content of Argument

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

Section 445. Cross and Separate Appeals

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Sub-chapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

Section 446. Non-Appearance of Parties

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of

the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

Section 447. Submission on the Briefs

By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

Section 448. Use of Physical Exhibits at Argument; Removal

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

Section 449. When Hearing or Rehearing in Banc Will Be Ordered

A majority of the Justices of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court in banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

(a) when consideration by the full Court is necessary to secure or maintain uniformity of its decision, or

(b) when the proceedings involves a question of exceptional importance.

Section 450. Suggestion of a Party for Hearing or Rehearing In Banc

A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the Justices of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a Justice in regular active service or the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

Section 451. Time for Suggestion of a Party for Hearing or Rehearing in Banc; Suggestion does not Stay Mandate

If a party desires to suggest that a motion or proceeding be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion in banc must be made within ten days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for hearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

SUBCHAPTER C

JUDGMENT

Section 461. Entry of Judgment

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any,

or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Section 462. Interest of judgments

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Tribal District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Tribal District Court the mandate shall contain instruction with respect to allowance of interest.

Section 463. Damages for Delay

If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Section 464. To Whom Costs Allowed

(a) Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

Section 465. Costs For Or Against the Tribe

In cases involving the Tribe or an agency or officer thereof, if an award of costs against or for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of Section 464, otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity, provided that costs

shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

Section 466. Costs of Briefs, Appendices, and Copies of Records

Unless otherwise provided by tribal statute or Court rule, the costs of printing, or otherwise producing necessary copies of briefs, appendices, and copies or records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the jurisdiction of the Tribe.

Section 467. Bill Of Costs; Objections; Costs Inserted In Mandate Or Added Later

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the Court. The Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the Tribal District Court.

Section 468. Cost On Appeal Taxable in the Tribal District Court

Costs incurred in preparation and transmission of the record, the costs of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the Tribal District Court as costs of the appeal in favor of the party entitled to costs under this Act.

Section 469. Petition For Re-hearing

- (a) Time For Filing, Content, Answer, Action By Court. A petition for re-hearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without re-argument or may restore it to the calendar for re-argument or re-submission or may make such other orders as are deemed appropriate under the circumstances of the particular case.
- (b) Form Of Petition; Length. The petition shall be in a form prescribed by Section 429, and copies shall be served and filed as prescribed by Section 427 for the service and filing of briefs. Except by permission of the Court, a petition for rehearing shall not exceed 15 pages.

Section 470. Issuance of Mandate

The mandate of the Court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Section 471. Voluntary Dismissal

(a) Dismissal In The Tribal District Court. If an appeal has not been docketed, the appeal may be dismissed by the Tribal District Court upon the filing in that Court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) Dismissal In The Supreme Court. If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

Section 472. Substitution of Parties

(a) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the Clerk of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of Sections 402, 403, and 404. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section., If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Act. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

(b) Substitution For Other Causes. If substitution of a party

in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

Section 473. Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Tribe Is Not A Party

It shall be the duty of a party who draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The Clerk shall thereupon certify such fact to the Tribal -Attorney and/or Tribal Prosecutor who may intervene upon such question upon motion.

ATTORNEY RULES

ATTORNEYS AND LAY ADVOCATES RULES

Rule 101. Admission to the Bar

(a) Roll of Attorney and Lay Advocates. The Bar of this Court shall consist of those attorneys and lay advocates heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule, and have signed the roll of attorneys of this Court.

(b) Procedure for Admission. There is hereby constituted a Committee on Admissions and Grievances, consisting of three members of the Bar of this Court, to be appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant, if an attorney, may be admitted. Lay Advocates shall be admitted upon examination as described below. An applicant for admission, who has qualified for admission, may, upon request, be admitted upon order of the Court after having filed his oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its tee in and be admitted by taking the oath of attorney in open Court upon motion of any member of the Bar of this Court.

It is desired that the procedure for admission by the Committee include a Tribal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules. It is anticipated that this program would be held in the ceremonial courtroom, and would, if possible, include presentations by Court officials and judicial officers. The Court will endeavor to set aside a portion on one day at the beginning of each term of a Tribal practice program which should be attended by those expecting to be admitted during that term unless such attendance would create a hardship for

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the prospective admittee.

Individual Justices may, from time to time, in emergency situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the oath shown in Exhibit I to these rules.

(c) Eligibility. Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Tribal Justice, Judge, or magistrate, or a member in good standing of the Bar of the highest court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

Any member of a federally recognized Indian Tribe shall be eligible for admission as a lay advocate upon successfully taking a comprehensive examination on the laws and rules applicable in the Tribal Court, which examination shall be promulgated by the Admissions Committee with the approval of the Court, and administered by the Admissions Committee at least once each year or at such other intervals as may be ordered by the Court. Upon receiving a passing score on the examination and showing their moral fitness to practice law, such persons should receive a favorable report from the Admissions Committee and be admitted to the practice of law in this Court and all inferior Tribal Courts. Thereafter, such lay advocates shall be held to the same standards, be entitled to the same rights; privileges, obligations, and duties, and be accorded all the honors to the same extent as any attorney admitted to practice before the Courts of the Tribe within this reservation.

(d) Reciprocity. Any attorney who shall have been admitted to practice in any Federal Court within this State may be admitted to practice in this Court upon the motion of a member of the Bar, in open Court, and the filing of a written application without the necessity of appearing before the Admissions Committee.

(e) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

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(f) Admission of Non-Resident Attorney for Limited Practice. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or of the highest Court of any Indian Tribe or State of the United States, who is a non-resident of the State may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (b) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the court.

(g) Temporary Admission. Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a Judge of the District Court or Justice of this Court be granted temporary admission to practice in a pending case.

(h) Withdrawal from Case. In any action, wherein appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(i) Discipline. Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

(j) Summary Discipline. For misconduct in the presence of the Court, an order may issue forthwith administering such discipline as the Court deems appropriate, including a fine of not to exceed \$500.00 or confinement of not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal

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any punishment imposed hereunder to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting en banc. The Justice or Judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal the discipline imposed will, upon request of the attorney, and by his posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within said seven (7) days, the punishment so imposed shall be forthwith administered unless in the interim the Judge or Justices imposing same has rescinded or modified his original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal direct to the Supreme Court.

(k) Conviction; Discipline in Other Court. Any member of the Bar of this Court convicted in either federal, state, or tribal court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated only on written application showing cause why he should be reinstated, excepting however that in the event the discipline imposed in the other jurisdiction has been stayed there the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. And provided further however that in the event a member of the Bar of this Court is disciplined in some other jurisdiction and this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. that there was such a infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

3. that the imposition of the same discipline by the Court would result in grave injustice; or

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4. that the misconduct established is deemed by the Court to warrant substantially different discipline,

then and in either of such events said attorney shall not be automatically similarly disciplined in this Court.

An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits his license to practice therein to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall forthwith be disbarred from practicing in this Court.

(1) Disciplinary Procedure. Proceedings to discipline a member of the Bar of this Court, except as set forth in paragraphs (j) and (k) hereof, shall be upon an order to show cause issued by the Court, reciting the charges and fixing notice of the date of hearing (which shall not be less than thirty (30) days from the date of the notice), and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at his last known address. The Court may, in its discretion, refer any Bar disciplinary matter to its Committee on Admissions and Grievances for proper investigation and recommendation to the Court, either before or after issuance of an order to show cause. The recommendation of the Committee on Admissions and Grievances, if same suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement.

Rule 102: Appearance and Withdrawal of Counsel

- (a) Appearance. Any attorney appearing for a defendant - in a civil or criminal case shall enter his appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a plaintiff should change counsel or add additional counsel, the new or additional counsel for such plaintiff shall enter his appearance on a form to be provided by the

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Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw conformably to Rule 101(h) only by order of the judge to whom the case is assigned.

(b) Certificate of Familiarity With Local Court Rules. Every person, upon entering an appearance in any case of proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

The same certification shall also be required of every other person thereafter participating in such cause or proceeding.

The Clerk shall keep a master file of all such certificates. Once a person has so certified his familiarity, he shall not be required to do so in subsequent cases unless required by order of the Court. A Judge of this Court may authorized the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of justice.

Rule 103: Courtroom Decorum

(a) The Canon of Professional Ethics were adopted by the American Bar Association and this Court as a general guide, because as stated in the preamble of the American Bar Association Canons, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned." In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and

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the usage's, customs, and practice of the bar of this Court. These Canons, and the statutes and common law of the Tribe relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(b) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

1. Be punctual in attendance at Court.
2. Refrain from addressing one another in Court by their first names.
3. Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained.
4. See that only one of them is on his feet at a time unless an objection is being made.
5. Refrain from approaching jurors who have completed a case unless authorized by the Court.
6. Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If however, it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained, and opposing counsel should be openly invited to accompany him.
7. Refrain from employing dilatory tactics.
8. Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
9. Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the judge.

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10. Hand to the Clerk, rather than the Court Reporter, any exhibits to be marked which have not previously been identified.

11. Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.

12. Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness or the exhibit, as the case may be, for that purpose.

13. Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument which has been previously admitted in evidence.

14. Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.

15. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.

16. Rise when addressing, or being addressed by the Court

17. Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner as befits an officer of the Judicial Branch of the Government and should abstain from any apparel or ornament calculated to attract attention to themselves.

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18. Comply, along with all other persons in the courtroom, with the following:

(i) No tobacco in any form will be permitted at any time.

(ii) No propping of feet on tables or chairs will be permitted at any time.

(iii) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.

(iv) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.

(v) No talking or other unnecessary noises will be permitted while Court is in session.

(vi) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.

(vii) All male lawyers and male Court personnel must wear both coats and ties, women lawyers and women Court personnel must be suitably attired.

(viii) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

Rule 104: Attorney Conference With Respect To Discovery Motions

With respect to all motions or objections relating to discovery, the Tribal District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that he has conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

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Rule 105: Free Press - Fair Trial

(a) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(c) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present; -

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

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(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law,

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(d) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(e) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

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(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(g) All Court supporting personnel, including among others, Tribal and Bureau of Indian Affairs Police and their deputies, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning in camera arguments and hearings held in chambers or otherwise outside the presence of the public.

(h) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Such a special order may be addressed to some or all of the following subject:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors and court officials) which might divulge prejudicial matter not of public record in the case. -

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of

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reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the Tribal Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(i) An order that no member of the public or news media representative be at any time permitted within the bar railing:

(ii) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.

(i) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a Tribal judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, television, recording, or photographing of investitive, ceremonial, or similar proceedings,

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and (3) the use of electronic or photographic equipment including recording apparatus by tribal officers or employees in the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

(j) As used in this Rule the term "environs" means any place in or near the tribal courtroom, or within the building in which the tribal courtroom is situated.

Rule 106: Plan of the Tribal Court for the Representation of Indigent Defendant.

(a) For Whom Appointed. As designated and provided by the Tribal Court for criminal defendants, and parents, and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation.

(b) Appointment Panel. Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.

(c) Pay. Appointees may be compensated at a rate determined by a Judge of this Court but not to exceed \$30.00 per hour for time expended in court and \$20.00 per hour for time expended out of court in addition to reasonable expenses as determined by a Judge of this Court as the Court-budget and court fund will allow. The compensation for legal services shall not exceed \$1,000.00 for an attorney in a case in which a crime punishable by banishment is charged, or in termination of parental rights cases, including all representation before the Supreme Court through appeal of the case, and shall not exceed \$400.00 for an attorney in a

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case in which a misdemeanor is charged including all representation before the Court through appeal of the case. Compensation in post-conviction cases, probation and parole revocation hearing and material witness matters shall not in any event exceed \$250.00 per attorney per case. In all events, the compensation paid shall be in that amount approved by a Judge of this Court.

(d) Claims. Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within 45 days after services are completed.

(e) Obligation of Court-Appointed Counsel to Disclose Client's Assets. If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(f) Refusal to Represent Indigents. An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed so to do by either a Judge or a Magistrate may have his name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without his consent, to represent more than one person each calendar year without receiving compensation therefore as provided in paragraph (v) of this rule. For good cause shown, the Court may excuse as attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such cases.

(g) Persons Obligated To Refund Court Fund For Attorney Fees Or Pay Attorneys. Every indigent person, and the parents of every child, for whom ,a court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their court appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such representation at the conclusion of the case, which amount shall not exceed the amount which the court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by

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motion filed in the case by the parties attorney, the Tribal Attorney, or Tribal District Attorney, at any time after the amount of such attorneys fees and costs have been set by the Court, and process may be issued as in civil cases to enforce this liability. All amounts recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for his fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amounts as he is entitled to pursuant to the order of the Court setting the attorney fees and costs.

OATH OF ATTORNEY

I do solemnly swear: I will support the Constitution of the United States, and the Constitution of the Pawnee Tribe. I will maintain the respect due to Courts of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's causes for lucre or malice:

So help me God.

RULES

Section 1. Scope and Applicability of Rules

(a) Scope. This Act governs the procedure in appeals to the Supreme court from the Tribal District Court, and in application for writs or other relief which the Supreme Court or a Justice thereof is competent to give. When this Act provides for the making of a motion or application in the Tribal District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.

(b) "Tribal Court" Defined. Unless otherwise specifically stated or required by the context, the term "Tribal Court" as used in this Act shall be deemed to refer to both the Tribal District Court and any Division, Judge, or Magistrate thereof.

(c) Jurisdiction Not Affected. This Act shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this Act shall be subject to the Constitution, of the Tribe.

Section 2. Suspension and Revision of Rules

(a) In the interest of expediting decisions, the furtherance of the administration of justice, or for other good cause shown, the Supreme Court may, except as provided in Section 406, suspend the requirements or provisions of any of Section of this Act in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction.

(b) In the interest of expediting decisions, the furtherance of the administration of justice, and the efficient functioning of the Court, the Supreme Court is authorized to amend any provision of this Act by Court Rule duly adopted and filed in the Supreme Court Clerk's Office and the Tribal Secretary's Office. Any Rule of the Court which would have the of amending this Act shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary's Office for a period of sixty days, within which time the Tribal Legislative Body may veto said Rule. If not vetoed, such Rules shall be placed in the Court's law library and shall take effect of the

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sixty-first day after filing or on such later date as may be provided by the Court.

Section 3. Discretionary Authority

Where no procedure is provided in this Act, other statutes of the Tribe, or the Supreme Court rules, the Supreme Court may proceed to exercise its functions in any lawful manner.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE III

CIVIL PROCEDURE

Prepared By:
Marvin E. Stepson
Attorney at Law
Fairfax, Oklahoma

October 1, 1993

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GENERAL PROVISIONS

Section 1. Scope of This Act

This Act governs the procedure in the Courts of the Tribe in all suits of a civil nature whether cognizable as cases at law or in equity except where a law or ordinance of the Tribe specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 2. Jurisdiction in Civil Actions

The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, the Indian Civil Rights Act of 1968, as amended, and any specific restrictions or prohibitions contained in Federal law.

Section 3. Title of this Act

This Act shall be known as the Code of Civil Procedure.

Section 4. Force of the Tribal Common Law

The customs and traditions of the Tribe, to be known as .the Tribal Common Law, as modified by the Tribal Constitution and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect with the Tribal jurisdiction in like force with any statute of the Tribe insofar as the common law is not so modified, but all Tribal statutes shall be liberally construed to promote their object.

Section 5. Definitions

Unless a different meaning is clearly apparent from the context, the term:

(a) "Chief Executive Officer" shall mean the President of the Pawnee Tribe of Oklahoma.

(b) "other Indian Tribe" shall mean any Federally recognized Indian Tribe other than this Tribe.

(c) "real property" or "non-trust interest in real property" shall mean any interest in real property within the Tribal jurisdiction other than the Indian trust title held by the United States for the use of any Indian or Indian Tribe, or the fee title to any land held by any Indian or Indian Tribe which is subject to a restriction upon alienation imposed by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.

(d) "reservation" means the last recognized reservation boundaries of the Pawnee Tribe irrespective of whether they have been disestablished.

(e) "Tribal Legislative Body" means the Tribal Council of the Pawnee Tribe.

(f) "Tribal jurisdiction" means all Indian Country as defined in 18 U.S.C. §1151 whether within or without the reservation which is subject to the jurisdiction of the Tribe.

Section 6. No Effect Upon Sovereign Immunity

Nothing in this Act contained shall be construed to be a waiver of the sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or to be a consent to any suit beyond the limits now or hereafter specifically stated by Tribal law.

Section 7. Declaratory judgment

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested or not due. In particular, the Court may issue its

declaratory judgment recognizing Tribal common law marriages and divorces, and provide for the custody of children and division of property in such divorces.

Section 8. Court Costs Not Charged to Tribe

The Tribe, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be charged or ordered to pay any Court costs or attorney fees under this Act, but if these entities prevail in the action, the cost which such entities would have been required to pay may be charged as costs to the losing party as in other cases.

Section 9. Effect of Previous Court Decisions

All previous decisions of the Courts of the Tribe, insofar as they are not inconsistent with this Act, shall continue to have precedential value in the Tribal Court.

Section 10. C.F.R. Not Applicable

Any and all provisions of Part 11 of Title 25 of the Code of Federal Regulations as presently or hereafter constituted are declared to be not applicable to the Tribe.

Section 11. Laws Applicable to Civil Actions

(a) In all civil cases, the Tribal District Court shall apply:

(1) The Constitution, Statutes, and Common Law of the Tribe not prohibited by applicable Federal law, and, if none, then

(2) The Federal law including Federal common law, and, if none, then

(3) The laws of any State or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Tribe.

(b) No Federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of Subsection (a) of this Section if such law is inconsistent with the laws of the Tribe or the public policy of the Tribe.

(c) Where any doubt arises as to the customs and usage's of the Tribe, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors familiar with those customs and usage's.

Section 12. Court Action When No Procedure Provided.

In any case in which no specific procedure is provided for by Tribal law or Court rule the Court may proceed in any lawful fashion not inconsistent with Tribal law, the rules of the Court, or the Indian Civil Rights Act.

CHAPTER ONE

COMMENCEMENT OF ACTION:
PLEADINGS, MOTIONS AND ORDERSSection 101. Commencement of Action

A civil action is commenced by filing a complaint with the Court.

Section 102. One Form of Action

There shall be one form of action to be known as a "civil action".

Section 103. "Claim" Defined

As used in this Act, the term "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

Section 104. Notice of Pendency of Action

Upon the filing of a complaint in the District Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third persons shall acquire an interest in the subject matter of the suit as against the plaintiffs title, except as provided in Sections 105 and 106 of this Act.

Section 105. Notice of Pendency Contingent Upon Service

Notice of the pendency. of an action shall have no effect unless service of process is made upon the defendant within one hundred twenty (120) days after the filing of the petition.

Section 106. Special Notice for Actions Pending in Other Courts

No action pending in either state or federal court, or the court of any other Indian Tribe, shall constitute notice with respect to any real property or personal property located within the Tribal jurisdiction until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected, or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the Clerk of the Tribal Court.

Section 107. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Section 117; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the Court for an Order shall be by motion which, unless made during a hearing or trial, shall:

- (i) be made in writing;
 - (ii) state with particularity the grounds therefore;
- and
- (iii) set forth the relief or order sought.

The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Section 111 of this act.

Section 108. General. Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. He may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. Then a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in Section 111. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;

- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of frauds;
- (18) Statute of limitations;
- (19) Waiver;

(20) Any other matter constituting an avoidance or affirmative defense.

When party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth and at trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations set forth in Section 111 of this Act.

(f) Construction of Pleadings. All pleadings shall be liberally construed so as to do substantial justice.

Section 109. Pleading Special Matters

(a) Capacity. It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's

knowledge, and that party shall have the burden of proof on that issue.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

Section 110. Form of Pleadings, Motions, and Briefs

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in Section 107(a). In the complaint the title of the action shall include the names of all the parties, but in other

pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

Section 111. Signing of Pleadings

Every pleading of a party represented by an licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney or advocate shall sign his pleading and state his address and telephone number. Except when otherwise specifically provided by Rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American Common Law Rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is not applicable in the Tribal Courts. The signature of an attorney or advocate constitutes a certificate by

him that he has read the pleading; that to the best of his knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section an attorney or advocate may be subjected to appropriate disciplinary action. Similar action, may be taken if scandalous or indecent matter is inserted.

Section 112. Defenses and Objections - When and How Presented-By Pleadings or Motions - Motion for Judgment on the Pleadings

(a) When Presented.

(1) A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under any one of Section 216, 218 or 221 of this Act and a different time is prescribed in the order of Court, or under the statute of the Tribe.

A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the Court, within 20 days after service of the order unless the order otherwise directs. The Tribe or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the Tribal attorney (or the Chief Executive Officer of the Tribe if there is no Tribal attorney) of the pleading in which the claim is asserted, provided that no default judgment shall be entered against the Tribe, and upon affidavit of the Chief Executive Officer of the Tribe that the Tribe has no attorney but that-an attorney contracts pending Bureau of Indian Affairs approved, the Court shall allow the Tribe to answer within twenty (20) days after approved of the Attorney contract or within sixty (60) days after service, whichever is later.

The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(2) Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (b) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non-conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure of state a claim upon which relief can be granted;

- (7) Failure to join a party under Section 303;
- (8) Another action pending between the same parties for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 905. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 905. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined

before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed to make such order as it deems just. Such motions are not favored.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no response pleading is permitted by this Act, upon motion made by a party within 20 days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by the rules relating to summary judgment.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h) (2) hereof on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service or process or lack of capacity of a party to sue is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 118(a) to be made as a matter of course or (C) if a permissive counterclaim is filed pursuant to Section 114(b).

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Section 303, and an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under Section 107(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Section 113. Final Dismissal on Failure to Amend.

On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed which should normally be ten (10) days absent good cause for a shorter or longer time. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the Court for filing an amended pleading. Within the time allowed by the Court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

Section 114. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action or (2) the opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may otherwise have which are otherwise properly raised.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the Tribe. This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Tribe or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Tribe or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Tribe, its officer, or agency, but does not waive such defenses for any other purpose.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the

pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of Court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment without leave of the Court by Section 118(a) of this Act, he may set up such counterclaim by amendment without leave of the Court.

(g) Cross-claim Against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Sections 303 and 304.

(i) Separate Trials; Separate Judgments. If the Court orders separate trials as provided in Section 706(b), judgment on a counterclaim, cross-claim, or third party claim may be rendered in accordance with the terms of Section 901(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Section 115. Counterclaim: Effect of the Statutes of Limitation

(a) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed,

and the counter claimant shall not be precluded from recovering an affirmative judgment.

(b) Where a counterclaim and the claim of the opposing party:

(1) Do not arise out of the same transaction or occurrence; and

(2) Both claims are for money judgments; and

(3) Both claims had accrued before either was barred by a statute of limitation; and

(4) The counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

(c) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

Section 116. Counterclaims Against Assigned Claims

A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

Section 117. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiffs claim against him, or who is or

may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Section 112 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Section 114. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Section 112 and his counterclaims and cross-claims as provided in Section 114. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(c) Party Defendants in Real Property Actions. In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "said defendant named herein claims some right, title, lien,

estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has no right, title, lien, estate, encumbrance, claim, assessment, or interest, either in law or in equity, in and to the real property involved herein", that same is insufficient to include any and all claims, known or unknown, that such defendant may have in and to the real property involved in such case, it not being necessary to set out the reason for such claim or claims in the complaint or other pleading for such person being made a party defendant.

Section 118. Amended and Supplemental Pleadings

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in

maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) know or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The delivery or mailing of process of the Tribal Attorney, or his designee, or the Attorney General of the Tribe, or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) thereof with respect to the Tribe or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

Section 119. Pre-Trial Procedure; Formulating Issues

(a) In any action, the Court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider.

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of act and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

(b) The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish by Rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions

Section 120. Lost Pleadings

If a pleading be lost or withheld by any person, the Court may allow a copy thereof to be substituted.

Section 121. Tenders of Money or Property

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court.

Section 122. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff: By Stipulation. Subject to the provisions of Section 307 or Section 802 or any statute of the Tribe, an action may be dismissed by the plaintiff without order of Court.

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever first occurs, or

(II) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendants, in any Court of any Indian Tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the District Court, upon notice to all adverse parties for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court

may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconveniences of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

(2) By Order of the Court. Except as provided in paragraph (1) of this subdivision of this Section, an action shall not be dismissed at the plaintiffs instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiffs motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with this Act, any Court rule, or any order of the Court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Section 751(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Section, other than a dismissal for lack of jurisdiction, or for failure to join a party under Section 303, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim. The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of

subdivision (a) of this Section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

CHAPTER TWO

PROCESS, SUMMONS,
FILING OF PLEADINGS AND OTHER PAPERSSection 201. Issuance of Summons

Upon the filing of the complaint the Court Clerk shall forthwith issue a summons and deliver it for service with a copy of the complaint to the plaintiffs attorney, Chief of Tribal Police or to a person specially appointed by the Court to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

Section 202. Form of Summons

The summons shall be signed by the Court Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiffs attorney, if any, otherwise the plaintiffs address, and the time within which this Act requires the defendant to appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. When, under Section 218, service is made pursuant to a statute or rule of the Court, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the ordinance or rule of the Court.

Section 203. Who May Serve Process Personally

(a) Process including a subpoena, if served in person, shall be served by the Chief of the Tribal Police or his deputy, or the Bureau of Indian Affairs Police, or their deputy, a person licensed to make service of process in civil cases pursuant to Court rule, or a person specially appointed by the Court for that purpose. A subpoena may also be served by any person over eighteen years of age who is not a party to the action.

(b) When process has been served and return thereof is filed in the office of the Court Clerk, a copy of the return shall be sent by the Court Clerk to the serving party's attorney within three (3) days after the return is filed.

(c) Process, other than a subpoena, shall not be served by a party's attorney except as provided in Section 204 of this Chapter. A party shall not make service of process unless appearing without an attorney, in which case, the party may make service of process in the same manner and to the same extent that an attorney for the party could have served that process under this Chapter.

(d) The Court shall freely made special appointments to serve all process under this paragraph.

Section 204. Service of Process by Mail

(a) A summons and petition, and a subpoena, may be served by mail by the plaintiffs attorney, or any person authorized to serve process pursuant to Section 203 of this Chapter.

(b) Service by mail may be accomplished by mailing the subpoena, or a copy of the summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.

(c) Service pursuant to this paragraph shall not be the basis for the entry of a default of a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default or judgment by default, the person serving the process shall mail to the defendant by first-class mail postage prepaid a copy of the summons and petition and a notice that despite such refusal the case will proceed and that judgment by ..default will be rendered against him unless he appears to defend the suit. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a judgment by default. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the Court that the return receipt

was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

(d) In the case of an entity described in subsection (c) of Section 217 of this Chapter, acceptance or refusal by any officer or by an employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

(e) In the case of governmental organization subject to suit, acceptance or refusal by an employee of the office of the officials specified in the appropriate subsection of Section 217 of this Chapter who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

Section 205. Service by Publication

Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that with due diligence service cannot be made upon the defendant by any other method.

Section 206. Publication Service Upon Parties and the Unknown Successors of Named Parties

(a) Service of summons upon named parties, the unknown successors of a named party, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in the complaint, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the complaint or the affiant does not know, and with due diligence cannot ascertain, the following:

(1) Whether a person named as a party is living or dead, and, if dead, the names or whereabouts of his successors, if any.

(2) The names or whereabouts of a party and the unknown successors, if any, of the named decedent or other parties.

(3) Whether a partnership, corporation, or other association named as a party continues to have legal existence or not; or the name or whereabouts of its officers or successors.

(4) Whether any person designed in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) The names or whereabouts of the owners or holder of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills of similar instruments.

(b) Service pursuant to this Section shall be made by publication of a notice, signed by the Court Clerk, in a newspaper authorized by law to publish legal notices which is published within the reservation. If no newspaper authorized by law to publish legal notices is published with the reservation, the notice shall be published in some such newspaper of general circulation within the reservation which is published in an adjoining county.

(c) All named parties, their unknown successors, and other persons who may be served by publication may be included in one notice. The notice shall state:

(1) The name of the Court in which the petition is filed,

(2) The names of the parties,

(3) Designate the parties whose unknown successors are being served, if any,

(4) That the named parties and their unknown successors have been sued and must answer the complaint or

other pleading on or before a time to be stated (which shall not be less than thirty-one (31) days from the date of the publication, or judgment, the nature of which shall be stated) will be rendered accordingly.

(5) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(d) If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

(e) Service is complete upon publication.

Section 207. Publication Notice for Recovery of Money

When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claim, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

Section 208. Publication Notice in Quiet Title Actions

In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should be defendant fail to answer, it is sufficient to state that a decree quieting plaintiffs title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title actions notice shall be published twice. The second publication shall not be less than seven nor more than forty-five days after the first publication. The answer shall be due thirty-

one days after the second publication, and service is complete upon the second publication.

Section 209. Completion of Publication Service

Service by publication is complete when made in the manner and for the time prescribed in this Chapter. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be entered on such service until_ proof of service by publication is filed with and approved by the Court.

Section 210. Entry of Default on Party Served by Publication

Before entry of a default judgment or order against a party who has been served solely by publication under this Chapter, the Court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this subsection. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements described in subsection (a) of Section 206 of this Chapter have been satisfied.

Section 211. Vacating Default judgments Where Service is by Publication

(a) A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at anytime within three (3) years after the date of the judgment or order, have the judgment or order opened and be let in to defend.

(b) Before a judgment or order is opened, the applicant shall notify the adverse party of his intention to make such challenge, and shall

(1) File a full answer to the petition,

(2) Pay all costs if the Court requires them to be paid, and,

(3) Satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice thereof in time to appear in Court and make his defense.

(c) The title to any property which is the subject of and which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall be affected by any proceedings under this Section. Nor shall proceedings under this Section affect the title of any property sold before judgment under an attachment.

(d) The adverse party, on the hearing of any application to open a judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the application has notice thereof in time to appear in Court and make his defense.

Section 212. Certain Technical Errors Not Grounds for Vacating judgment

(a) No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, was not annexed to his complaint so long as said affidavit is on file in the action, and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.

(b) No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff.

(c) All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the complaint or pleading was verified by the plaintiff or other party obtaining such service by publication.

Section 213. Meaning of "Successors" for Publication Purposes

The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

Section 214. Minimum Contacts Required for Effective Long Arm Service

Service outside of the Tribal jurisdiction does not give the Court in persona jurisdiction over a defendant who is not subject to the jurisdiction of the Courts of this Tribe, or who has not, either in person or through an agent, submitted himself to the jurisdiction of the Courts of this Tribe either by appearance, written consent, or having voluntarily entered into sufficient contacts with the Tribe, its members, or its territory to justify tribal jurisdiction over him in accordance with the principals of due process of law and federal Indian law.

Section 215. Consent is Effective Substitute for Service

An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

Section 216. Service Pursuant to Court Order

If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (a) or (c) of Section 217 of this Chapter may be served as provided by Court order in any manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

Section 217. Manner of Making Personal Service

The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such certified copies as are necessary. If the complaint is not served with the summons, the case shall not be dismissed but the time to answer should be extended by the Court upon motion. The person serving the summons shall state on the copy that is left with the party served the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. Service of the summons and complaint and service of subpoenas shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and a copy of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(b) Upon an infant, by delivering a copy of the summons and complaint to either parent and the legal guardian of the infant, if any, or the person with whom he resides if the infant is under the age of fourteen years. If the infant is over the age of fourteen years, by serving either parent and the legal guardian of the infant, if any, or the person with whom he resides and by serving the infant personally if the legal guardian cannot be located.

(c) Upon 'a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. Service may also be had upon such entities by delivering the summons and complaint to a place of business of such entity and leaving a copy with the person in charge of that place of business at the time service is made.

(d) Upon the United States, by delivering a copy of the summons and of the complaint to the United States Attorney for the Western District of Oklahoma or to an assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the Clerk of the United States District Court for the Western District of Oklahoma and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(e) Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such _officer or agency. _If the agency is a corporation the copy shall be delivered as provided in subsection (c) of this Section.

(f) Upon a state, a state municipal corporation, any other Indian Tribe not a party to this Act, or other governmental

organization thereof subject to suit, by delivering copy of the summons and of the complaint to the Chief Executive Officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state or Tribe for the service of summons or other like process upon any such defendant.

(g) Upon this Tribe by delivering a copy of the summons and complaint to the Chief Executive Officer of the Tribe, or to such Tribal officer or employee as may be designated by the Chief Executive Officer of the Tribe in a writing filed with the Clerk of the Tribal District Court, and by sending a copy of the summons and complaint by registered or certified mail, return receipt requested, to the Tribal Attorney and in any action attacking the validity of an order of an officer or agency of the Tribe not made a party, by also sending a copy of the summons and complaint by registered or certified mail, return receipt request, to such officer or agency. The name and address of the Tribal Attorney may always be obtained from the Bureau of Indian Affairs.

(h) Upon any officer or agency of this Tribe by serving the Tribe, and by delivering a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subsection (c) of this section.

Section 217.1 Defendant

Effect of Service of Some of Several

(a) Where the action is against two or more defendants, and one or more shall be been served, but not all of them, the plaintiff may proceed as follows:

(1) If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, he may proceed against the defendants' served, unless the Court otherwise orders; and if he recover judgment, it may be entered against: (a) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all, and (b) against the defendants serve insofar as the judgment may be enforced against the separate property of

the defendants served, and if they are subject to arrest, against the persons of the defendants served.

(2) If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

(b) A judgment against one or more defendants served, whether jointly or severally liable, shall not be construed to make such judgment a bar to another against those not served.

Section 218. Service Upon Party No Inhabitant of or Found Within the Reservation

(a) Whenever an ordinance of the Tribe or an order of the Court of the Tribe provided for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the geographical boundaries of the Tribal reservation, service may be made under the circumstances and in the manner prescribed by the ordinance or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this Act.

(b) In any action against a foreign corporation or association where service is authorized by Tribal law upon a Tribal Officer, and the party seeking service elects to serve the Tribal Officer, service shall be made as follows:

(1) The Tribal District Court Clerk shall issue a summons and shall forthwith mail or personally serve triplicate copies of said summons, together with a copy of the complaint and the service fee to the Tribal Officer. The Court Clerk shall make due return, indicating that the summons and complaint copies have been delivered to the Tribal Officer and the date of such delivery. Receipt of the summons and complaint by the Tribal Officer shall constitute service upon him. Within three (3) working days after service upon him, the Tribal Officer shall send copies of the summons and complaint to such foreign corporation or association, by registered or

certified mail, return receipt requested, at its office as shown by the articles of incorporation, or charter, or by the latest information officially filed in the office of the Tribal Officer. The summons shall set forth the last-known address of the office of the corporation or association as ascertained by the parties by use of due diligence, and the Tribal Officer shall mail copies of the summons and complaint to the corporation or association at this address. The Tribal Officer shall maintain one copy of the summons and complaint with the records of the corporation or association.

(2) The original summons that is served on the Tribal Officer shall be in form and substance the same as provided in suits against residents of the Tribal jurisdiction. The summons shall state an answer date which shall be not less than forty-five (45) days or more than sixty (60) days from the date that such summons was issued.

Section 219. Territorial Limits of Effective Service

(a) All process, other than subpoena or process involving the detention, seizure, or arrest of persons or property, may be served anywhere within the reservation boundaries, or any Indian Country, as defined by 18 U.S.C. §1151, which is subject to the jurisdiction of the Tribe and, when authorized by an ordinance of the Tribe or by this Act, beyond these territorial limits.

(b) In addition, persons who are brought in as parties pursuant to Section 117 of this Act, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Section 303, may be served in the manner stated in subsections (a)-(f) of Section 217 of this Act at all places outside the reservation of the Tribe but within the United States, and persons required to respond to an order of commitment for civil contempt may be served, but not arrested, at the same places.

(c) A subpoena or process involving the detention, seizure, or arrest of persons or property, may be served and compulsorily enforced only within the Indian Country, as defined by 18 U.S.C. §1151, which is subject to the jurisdiction of the Tribe. A subpoena

or other process involving the detention, seizure or arrest of a person or property may be served anywhere within the United States, but no compulsory enforcement thereof may be maintained in this Court unless such person or property is located with the Indian Country of the Tribe when service is made.

(d) When the exercise of jurisdiction is authorized by Tribal or Federal law, service of the summons and complaint may be made outside this reservation:

(1) By personal delivery in the manner prescribed for service within this reservation,

(2) In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its Courts of general jurisdiction,

(3) By publication in appropriate circumstances,

(4) As directed by the foreign authority in response to a letter rogatory, or

(5) As directed by the Court.

Section 220. Return of Service of Process

(a) The person serving the process shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than the Chief of Tribal police or his deputy, the Bureau of Indian Affairs Police or their deputy, or an attorney by mail, he shall make affidavit thereof. Return of receipt for certified or registered mail shall be attached to the proof of service if service was made by mail. A copy of each publication of notice shall be attached to the return of service by publication. Failure to make proof of service does not affect the validity of the service.

(b) The person serving the summons shall state on the copy that is left with the party served, as well as on the return, the date

that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer.

Section 221. Alternative Provisions for Service in a Foreign Country

(a) Manner. When the law of the Tribe referred to in Section 218 of this Chapter authorizes service upon a party not an inhabitant of or found within the territorial limits of effective service of the Tribal Court, and when service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (1) in the manner prescribed by the law of the Tribe, state, or foreign country for service in that Tribe, state, or country in an action in any of its Courts of general jurisdiction; or (2) as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice; or (3) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (4) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the Clerk of the Court to the party to be served; or (5) as directed by the order of the Court. Service under (3) or (5) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the District Court or by the foreign Court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer who will make the service.

(b) Return. Proof of service may be made as prescribed by Section 220 of this Chapter, or by the law of the Tribe, state, or foreign country, or by order of the Court. When service is made by mail pursuant to subsection (a) of this Section, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court.

Section 222. Subpoena

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the Clerk under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary or other physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by the Chief of the Tribal Police, by his deputy, the Indian Police of the Bureau of Indian Affairs, or by any other person authorized by the Court or by this Act who is not a party and is not less than 18 years of age. Service of a subpoena thereof to such person and by tending to him the fees for one day's attendance and the mileage allowed by law. Then the subpoena is issued on behalf of the Tribe or an officer or agency thereof, fees and mileage need not be tendered, but fees paid shall be charged to such Tribal Officer or agency budget. A subpoena may be served as provided in Section 204 if accepted by the addressee. All subpoena service expenses may be recovered as other costs.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Sections 405(b) and 406(a) or presentation of prepared notices to be attached to the subpoena constitutes a sufficient authorization for the issuance by the Clerk of the

District Court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Section 401(b), but in that event the subpoena will be subject to the provisions of Section 401(c) and subdivision (b) of this Section.

- The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoenas was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the Tribal jurisdiction may be required to attend an examination at any place within the Tribal jurisdiction not more than fifty (50) miles from his residence, except that he may be required to attend in the country or district wherein he resides or is employed or transacts his business in person, or in the town in which the District Court is located, or at such other convenient place as is fixed by an order of the Court. A nonresident of the Tribal jurisdiction may be required to attend only in the county wherein he is served with a subpoena or resides or within 50 miles from the place of service, or at such other convenient place as is fixed by an order of the Court.

(e) Subpoena for Hearing or Trial.

(1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the Clerk of the District Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within

the Tribal jurisdiction, or at any place without the Tribal jurisdiction that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the Tribe provides therefore, the Court upon application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign county shall issue under the circumstances and in the manner and be served as may be provided by any Tribal statute.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him within the Tribal jurisdiction may be deemed a contempt of the District Court.

Sections 223-229. Reserved

Section 230. Summons, Time Limit for Service

(a) If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Courts own initiative with notice to the plaintiff or upon motion.

(b) If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the complaint, the action shall be deemed to have been dismissed without prejudice as to that defendant. This Section shall not apply to service in a foreign country.

Section 231. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court

otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure, and upon any person then known to claim an ownership interest in the property.

(b) Service: How Made. Whenever service is required or permitted to be made upon a party represented by an attorney (including any person licensed to practice law before the Tribal Court) the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the attorney or to the party; or leaving it at his office with his Clerk or other person in charge thereof; or, if there is not one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person fifteen years of age or older then residing therein. Service by mail is complete upon mailing

(c) Service: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, any order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance by all other parties and that the

filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceeding, or to enforce or resist such discovery.

(e) Filing with the Court defined. The filing of pleadings and other papers with the Court as required by this Chapter shall be made by filing them with the Clerk of the Court except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Clerk.

Sections 232-239. Reserved

Section 240. Computation and Enlargement of Time

(a) Computation. In computing any period of time prescribed or allowed by this Act, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The lastday of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end Of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of the Clerk of the Court does remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to 7 days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "legal holiday" includes New Year's Day, Washington's Birthday,

Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Tribe.

(b) Enlargement. When by this Act or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may (1) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Sections 757(b), 752(c), (d) and (e), and Section 909(b), except to the extent and under the conditions stated in them.

(c) For Motions-Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Section 908(c), opposing affidavits may be served not later than 1 day before the hearing, unless the Court permits them to be served at some other time.

(d) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Section 241. General Cases in Which Extraterritorial Service Authorized

Service of summons and complaint, third party complaints, and other process by which an action is instigated may be made outside

the territorial limits described in Section 219 in the following cases in addition to any circumstances specifically or otherwise provided for:

(a) In all actions arising under the Tribal juvenile statutes or The Indian Child Welfare Act:

(b) In all divorce actions when one of the parties is a resident of the Tribal jurisdiction or a member of the Tribe;

(c) In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the Tribal jurisdiction; or

(d) In all actions arising out of the negligent operation of an automobile within the Tribal jurisdiction by a non-resident when an injury to person or property resulted within the Tribal jurisdiction from the negligent operation of the motor vehicle.

Section 242. Legal Newspaper

All newspapers regularly published at least once each week for a period of two years prior to the date of publication of a notice within the reservation or in any county adjacent thereto, and the Tribal newspaper shall be legal newspaper for the publication of any notice required to be published by Tribal law.

CHAPTER THREE

PARTIES

Section 301. Parties Plaintiff and Defendant: Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit of another shall be brought in the name of the Tribe.

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the Courts of the Tribe, and service may be had upon unincorporated associations and partnership as provided in Section 217(c) of this Act, upon a managing or general partner, or upon an officer of an unincorporated association.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent persons has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad item. The Court shall appoint a guardian ad item for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(d) Assignment of Tort Claims Prohibited. Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this subsection shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

(e) Definitions. For the purposes of this Section, the term "infant" means and includes every natural person less than eighteen years of age not declared emancipated from his parent or guardian by order of a Court of competent jurisdiction; and the term "incompetent person" means and includes every natural person who has been legally declared incompetent by a Court of competent jurisdiction by reason of mental incapacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.

Section 302. Joinder of Claims, Remedies, and Actions

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as he may have against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

(c) Joinder of Actions By the Court. Whenever it appears to the Court that separate actions are pending between -the same parties, or involving the same facts or law, the Court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

Section 303.
Adjudication

joinder of Persons Needed for Just

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

(1) In his absence complete relief cannot be accorded among those already parties, or

(2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:

(i) as a practical matter impair or impede his ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claims interest.

If he has not been so joined, the Court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court in making such determination include:

(1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) Third, whether a judgment rendered in the person's absence will be adequate; and

(4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(c) Pleading Reasons for Non-Joinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This Section is subject to the provisions of Section 307.

Section 304. Permissive Joinder of Parties (a)

Permissive Joinder.

(1) All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question or fact common to all these persons will arise in the action, or if the claims are connected with the subject matter of the action.

(2) All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.

Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

(c) Separate Trials. The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim, or who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Section 305. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the Court specified in Section 115 (a). Any claim against a party may be severed and proceeded with separately upon order of the Court.

Section 306. Interpleader

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles by which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section

supplement and do not in any way limit the joinder of parties permitted in Section 304.

(b) The provisions of this section shall be applicable to actions brought against a Tribal policeman or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of this section against the party in whose favor the execution issued.

(c) The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

(d) In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection c of this Section.

Section 307. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) The class is so numerous that joinder of all members is impracticable,

(2) There are questions of law or fact common to the class,

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) The representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subsection (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk if:

(i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(ii) adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The Court finds that the question of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in

the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action
to be Maintained; Notice; Judgment; Actions
Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual members who can be identified through reasonable effort. The notice shall advise each member that

(i) the Court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(iii) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate

(i) an action may be brought or maintained as a class action with respect to particular issues, or

(ii) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall then be construed and applied accordingly.

(5) Where the class contains More than five hundred (500) members who can be identified through reasonable effort, it shall be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such , manner as the Court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at anytime before the issue of liability is determined, and commencing an individual action before the issue of liability is determined shall be equivalent of requesting exclusion from the class.

(d) Orders in Conduct of Actions. In the conduct of actions to which this Section applies, the Court may make appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing conditions on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) Dealing with similar procedural matters.

_ The orders may be combined with an order under Section 119, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

Section 308. Derivative Actions by Shareholders and Members

(a) In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(1) That the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and

(2) That the action is not a collusive one to confer jurisdiction on a Court of the Tribe which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members,

and the reasons for his failure to obtain the action or for not making the effort.

(b) The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs. The Court shall not take jurisdiction over such actions concerning the internal affairs of corporations or other entities formally organized under the law of some other jurisdiction absent the consent of all parties to the controversy or some compelling reason to assume such jurisdiction.

(c) An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Section 307(d) and the procedure for dismissal or compromise of the action shall correspond with that provided in Section 307.

Section 309. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Tribe confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone can be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of

law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a tribal, federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 231. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.

(d) Intervention By the Tribe. In any action, suit, or proceeding to which the Tribe or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Tribe affecting the public interest is drawn in question, the parties, and upon their failure to do so, the Court shall certify such fact to the Chief Executive Officer of the Tribe, the Tribal Attorney, and Tribal Legislative Body and the Court shall permit the Tribe to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability. The Tribe shall, subject to the applicable provisions of law, have all the rights of a party, and be subject to the liabilities of a party -- as to court costs only-to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality or enforceability of the Tribal laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court or by a separate written notice filed with the Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Tribe as provided above.

Section 310. Substitution of Parties

(a) Death.

(1) If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 231 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the Tribal jurisdiction. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(3) Actions for libel, slander, and malicious prosecution shall abate at the death of the defendant.

(4) Other actions, including actions for wrongful death shall survive the death of a party.

(b) Competency. If a party becomes incompetent, the Court upon motion served as provided in subdivision (a) of this Section may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this Section.

(d) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name but the Court may require his name to be added.

CHAPTER FOUR

DEPOSITIONS AND DISCOVERY

Section 401. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under subdivision (c) of the Section, the frequency of use of these methods is not limited. Discovery may be obtained as provided herein in aid of execution upon a judgment.

(b) Scope of Discovery. Unless otherwise limited by order of the Court in accordance with this Chapter, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not be

reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: materials. Subject to the provisions of subdivision (b)(4) of this Section, a party may obtain discovery of documents and 'tangible things otherwise discoverable under subdivision (b)(1) of this Section and prepared in anticipation of litigation or for a trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that the is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4) (C) of this section, concerning fees and expenses as the Court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Section 410(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this Section; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this Section the Court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Section the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition, the court in the jurisdiction where the deposition is to be taken may

make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place,- (3) that the discovery may be had only ..by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any part or person provide or permit discovery. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under as duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject

matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Section 402. Depositions Before Action or Pending Appeal (a) Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in court may file a verified petition in the District Court if the tribal jurisdiction is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in the District Court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to perpetuate it, (4) the names or description of the persons he expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petition to take the depositions of the persons to be examined named in the petition, for the purposes of perpetuating their testimony.

(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the Tribal jurisdiction in the manner provided in Section 217(d) for service of summons. If personal service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Section 217(d), an attorney or advocate who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Section 301(c) apply. Any attorney appointed pursuant to this Section shall be compensated as provided by the Court from the Court fund, such compensation to be taxed as costs against the person perpetuating the testimony.

(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this Chapter; and the Court may make orders of the character provided for by Sections 409 and 410.

(4) Use of deposition. If a deposition to perpetuate testimony is taken under this Chapter or if, although not so taken, it would be admissible in evidence in the Courts of the jurisdiction in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the District Court, in accordance with the provisions of Section 407(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the District Court or before the taking of an appeal if the

time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the District Court. In such case the party who desires to perpetuate the testimony may make a motion in the District Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Section 409 and 410, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these sections for depositions taken in actions pending in the District Court.

(c) Perpetuation by Action. This Section does not limit the power of a Court to entertain an action to perpetuate testimony.

Section 403. Persons Before Whom Depositions May Be Taken

(a) Within the Tribal Jurisdiction. Within the jurisdiction of the Tribe, depositions shall be taken before an Office authorized to administer oaths by the laws of the Tribe, or before a person appointed by the Court in which the action is pending. A person so appointed has power to administer oaths and take testimony. All parties shall be subject to these provisions anywhere within the reservation as defined in this Act.

(b) Outside the Tribal Jurisdiction. Outside the Tribal jurisdiction, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held-, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate.

It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (Here Name of Tribe, State, or Country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the tribal jurisdiction under these sections.

(c) Disqualification for Interest. No deposition shall be taken before a person who is relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Section 404. Stipulations Regarding Discovery Procedure

Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by this Chapter for other methods of discovery, except that stipulations extending the time provided in Sections 408, 408, 411 for responses to discovery may be made only with the approval of the Court.

Section 405. Depositions Upon Oral Examination

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made by publication, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in

subdivision (b)(2) of this Section. The attendance of witnesses may be compelled by subpoena as provided in Section 222. The deposition of a person confined in prison may be taken only by Leave of Court on such terms as the Court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of Court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the tribal jurisdiction and outside the reservation, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Section 111 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise due diligence to obtain counsel to represent him at the-taking of the deposition, the deposition may not be used against him.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The Court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcript made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Section 409 for the production of documents and tangible things at the taking of the deposition. The procedure of Section 409 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these sections.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Tribal Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered

in accordance with subdivision (b)(4) of this Section. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party, the District Court or the Court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 401(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the District Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

- (e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given

therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 407(d)(4) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the District Court or send it by registered or certified mail to the Clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the persons producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The court may, by section, establish the maximum charges which are reasonable for such services.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Section 406. Depositions Upon Written Questions

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Section 222. The depositions of a person confined in prison may be taken only by Leave of Court on such terms as the Court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 405(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after

being served with redirect questions, a party may serve re-cross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by Section 405(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Section 407. Use Of Depositions In Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 405(b)(6) or Section(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds:

(A) that the witness is dead; or (B) that the witness is outside the jurisdiction of the Tribe, and cannot be served with a subpoena to testify at trial while within the Tribal jurisdiction unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court to allow the deposition to be used.

(4) If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts, subject to the Rules of Evidence.

Substitution of parties pursuant to Section 310 does not affect the right to use depositions previously taken; and, when an action in any court of any Indian Tribe, the United States, or of any State has been dismissed and another action involving the same subject matter is afterward brought between the same parties, or their representatives or successors in interest, in the Tribal District Court, all depositions lawfully taken and duly filed in the foregoing action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Section 403(b) and subdivision (c) (3) of this Section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reasons which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(i) objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(ii) errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind might be obviated, removed or cured if promptly resented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(iii) objections to the form of written questions submitted under Section 406 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 405 and 406 are waived unless a motion to suppress the deposition or some part thereof is made

with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Section 408. Interrogatories to Parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. In the answers, the full text of the interrogatory shall immediately precede the answer to that interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Section 412(a) with respect to an objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Section 401(b), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery

has been completed of until a pre-trial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts or summaries.

Section 409. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, and designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 401(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of Section (b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to

be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 412(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons Not Parties. This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Section 410. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Section 410(a) or the person examined, the party

causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report or examination of a person not a party, the party shows that he is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered• at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other Section of the Act.

Section 411. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 401(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and

copying. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit to deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reasons for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter on which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Section 412(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Section, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Section 412(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Section 119 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. An admission made by a party under this Section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Section 412. Failure to Make Discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the District Court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is being taken if necessary. An application for an order to a deponent who is not a party may be made to the Court in the jurisdiction where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Sections 405 or 406, or a corporation or other entity fails to make a designation under Section 405(b)(6) or Section 406(a), or a party fails to answer an interrogatory submitted under Section 408, or if a party, in response to a request for inspection submitted under Section 409 fails, to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Section 401(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the Court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances made an award of expenses unjust.

If the motion is granted in part and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and person in just manner.

(b) Failure to Comply with Order.

(1) Sanctions by Court in Jurisdiction Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that court. Sanctions imposed in such matters by any foreign court shall be given full faith and credit and promptly enforced by the Tribal Court, subject

to the Tribal Courts authority to modify the sanctions imposed as justice may require.

(2) Sanction by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Section 405(b)(6) or Section 406(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Section or Section 410, the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(i) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(v) Where a party has failed to comply with an order under Section 410(a) requiring him to produce another for examination,- such orders as are listed in paragraphs (i), (ii), and (iii) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 411, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Section 411(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit has reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure to Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Section 405(b)(6) or Section 406(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers to objections to interrogatories submitted under Section 408, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Section 409, after proper service of the request, the District Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (i), (ii), and (iii) of subdivision (b) (2) of this Section. In lieu of any order 'or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Section 401(c).

CHAPTER FIVE

WITNESSES

Section 501. Issue and Service of Subpoena for Witnesses

The clerk of the Court shall, on application of any party having a cause or any matter pending in the Court, issue a subpoena for a witness, under the seal of the Court. The clerk may issue separate subpoenas for each person, issue one subpoena carrying the names of all persons subpoenaed, or may at the request of any party, issue subpoenas in blank. A subpoena may be served by the Tribal or Bureau of Indian Affairs Police, or by the party, or any other person in the manner provided in Section 217. When a subpoena is not served by the Tribal or Bureau of Indian Affairs Police, proof of service shall be shown by affidavit; but no costs of service of the same shall be allowed, except when served by the Tribal Police, a licensed process server, Bureau of Indian Affairs Police, or a person serving by special appointment.

Section 502. Subpoenas - Contents

The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing or other thing, under his control, which he is bound by law to produce as evidence.

Section 503. Subpoena for Deposition

When the attendance of the witness before any officer authorized to take depositions, is required, the subpoena may be issued by such officer.

Section 504. Subpoena for Agency Hearings

When the attendance of the witness is required before any Tribal Agency authorized to issue a subpoena, the subpoena may be issued by any officer of the agency or by such person as may be authorized to issue subpoena by Agency rule.

Section 505. Witness May Demand Fees - Exception

A witness may demand his traveling fees and fee for one day's attendance as shall be set by Court rule, when the subpoena is served upon him; and if the same be not paid, the witness shall not be obliged to obey the subpoena.

The fact of such demand and non-payment shall be stated in the return, Provided, however, that witnesses subpoenaed by any Tribal department, board, commission or legislative committee authorized to issue subpoenas shall be paid their attendance and necessary travel, as provided by law for witnesses in other cases, at the time their testimony is concluded out of funds appropriated to such department, board, commission or legislative committee. In the case of subpoena issued by such Tribal agencies, the witness may not refuse to attend because fees and travel expenses were not paid in advance.

Section 506. Disobedience of Subpoena

Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the Court or officer by whom his attendance or testimony is required.

Section 507. Attachment of Witness

When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the Court or officer before whom his attendance is required may issue an attachment to the Chief of the Tribal Police or the Bureau of Indian

Affairs Police or their deputy, commanding him to arrest and bring the person therein named before the Court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the Court or officer, a sum may be fixed not to exceed \$100.00 in which the witness may give an undertaking, with surety, for his appearance; such sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be one hundred dollars. If the witness be not personally served, the Court may, but a rule, order him to show cause why an attachment should not issue against him.

Section 508. Punishment for Contempt

(a) The punishment for the contempt provided in Section 507 of this Act shall be as follows: When the witness fails to attend, in obedience to the subpoena, except case of a demand and failure to pay his fees, the Court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00). In case the witness attends but refuses to be sworn or to testify, the Court or officer may fine the witness in a sum not exceeding Fifty Dollars (\$50.00), or may imprison him in the Tribal jail, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the Court or Tribal Agency shall be paid into the Tribal treasury, and that imposed by the officer at a deposition shall be for the use of the party for whom the witness was subpoenaed. The witness shall, also, be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

(b) The punishment provided in this section shall not apply where the witness refuses to subscribe a deposition. The punishment provided in this section is civil in nature, and shall not be interpreted in any way as a criminal punishment, nor shall the punished person be deemed convicted of any criminal offense.

(c) When the witness purges his contempt, the Court, officer, or agency may suspend any punishment imposed.

Section 509. Discharge When Imprisonment Illegal

A witness so imprisoned by an officer before whom his deposition is being taken, or by a Tribal Agency Officer, may apply to a judge of the Tribal Court who shall have power to discharge him, if it appears that his imprisonment is illegal.

Section 510. Commitment

Requisites of Attachment - Order of

Every attachment for the arrest, or order of commitment to jail of a witness by the Court or an officer, pursuant to this Chapter, must be under the seal of the Court or officer, if he have an official seal, and must specify, particularly, the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the Tribal or Bureau of Indian Affairs Police, and shall be executed by committing him to the Tribal jail, and delivering a copy of the order to the jailor.

Section 511. Examination of Prisoner

A person confined in the Tribal jail may by order of the Tribal Court, be required to be produced for oral examination at a hearing, but in all other cases his examination must be by deposition.

Section 512. Prisoner's Custody During Examination

While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge who shall afford reasonable facilities for the taking of the deposition.

Section 513. Witness Privileged

A witness shall not be liable to be sued in the Tribal Court if he does not reside within the tribal jurisdiction by being served with a

summons while going, returning, or attending in obedience to a subpoena.

Section 514. Witness May Demand Fees Each Day - Exception

At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena; and if the same be not paid, he shall not be required to remain, except witnesses subpoenaed by any Tribal department, board, commission, or legislative committee or body authorized by law to issue subpoenas shall be paid for their attendance and necessary travel from that agencies approved budget as provided by law in other cases at the time their testimony is completed.

Section 515. Special Provisions for Tribal Agencies

(a) No Tribal agent or employee may be required to attend and testify in their official capacity for any private party absent the consent of their Department head or higher ranking superior.

(b) No Tribal agent or employee may be paid a witness fee in addition to their regular salary or other compensation, if they are on duty at the time they are required to attend and testify, and shall be deemed to have elected to receive their regular salary or other compensation unless they request leave without pay prior to the time they appear in response to the subpoena, provided, that when such agents or employees appear and testify while being paid the regular salary or other compensation, the normal witness fee shall be charged as costs in the case for the benefit of the Tribe and paid into the Tribal Treasury for the benefit of the Tribe, and the agent or employee's supervisor may require prepayment of said fees as a condition precedent of his approval for their appearance. Such witnesses shall be entitled to receive their travel costs, if any, from the party in advance as in other cases.

SUBCHAPTER A
TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION

Section 550. Privilege For Committee Testimony

No testimony given by a witness before the Tribal Legislative Body, or any agency established by Tribal law having power to issue a subpoena, shall be used as evidence in any criminal proceeding against him in any part, except in a prosecution for perjury committed in giving such testimony if such person is granted immunity as provided in Section 551. An official paper or record produced by him is not within the privilege.

Section 551. Procedure for Claiming Privilege

In the case of proceedings before a committee or agency, when two-thirds (2/3) of the members of the full committee or agency shall be affirmative vote have authorized such witness to be granted immunity under this Chapter with respect to the transactions, matters, or things, concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, such person shall be privilege as stated in Section 550 of this Chapter. Such an Order may be issued by a Tribal District Court Judge upon application by a duly authorized representative of the committee or agency concerned, accompanied by the written approval of the Tribal Legislative Body. The Curt shall not grant immunity to any witness without first having notified the Tribal Attorney of such action. The Tribal Attorney shall be notified of the time of each proposed application to the District Court and shall be given an opportunity to be heard with respect thereto prior to the entrance into the record of the Order of the District Court. No witness shall be exempt from prosecution for perjury or contempt Committed while giving testimony or producing evidence under compulsion as provided in this Section.

Section 552. Oaths

The members of the Tribal Legislative Body, a Chairman or equivalent officer of any committee or agency to issue subpoenas, and any officer or employee of the commission or agency authorized by agency or commission rule, is empowered to administer oaths to witnesses in any case under their examination.

Section 553. Penalties

(a) Every person who having been summoned as a witness by the authority of the Tribal Legislative Body or other tribal agency authorized to take testimony any compel attendance or witnesses by subpoena, to give testimony or produce papers under a grant of immunity provided by Section 551 upon any matter under inquiry before that body, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be punishable by a civil fine of not more than Five Hundred Dollars (\$500.00) to be imposed by that body, and to an attachment and commitment to be imposed by that body to the Tribal jail until such testimony be given.

(b) In addition to, or in the alternative to civil punishment, the agency may proceed in the Tribal Court for an order requiring such witness to testify, and if such order is issued and disobeyed by the witness, the witness shall be guilty of an offense, and may be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in the Tribal jail for a term not exceeding six months, or both.

Section 554. Disgrace as Ground for Refusal to Testify

No witness is privileged to refuse to testify to any fact, or produce any paper, respecting which he shall be examined by the Tribal Legislative Body, or by any subordinate committee or agency thereof authorized to issue subpoenas, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace or otherwise render him infamous, provided that such fact or paper is reasonably related to the purpose of the hearing and the purpose of the hearing is reasonably related to the exercise by the body, agency, or committee of authority delegated to it by law.

Section 555. Prosecution

Whenever a body before whom a witness granted immunity pursuant to this Subchapter believes that a criminal prosecution pursuant to Section 553(b) should be instituted, it shall certify such fact to the Tribal Attorney General. or prosecutor, whose duty it shall

be to bring the matter in the Court by information or complaint for prosecution if the person has not purged his contempt within 48 hours.

Section 556. Fees and Mileage

(a) Witnesses before legislative and administrative bodies compelled to attend by subpoena shall be paid the same fees and mileage as are paid in civil cases in the Tribal District Court from the approved budget of said body.

(b) Witness fees and allowances for mileage shall be set by rule of the court. Witness fees shall not exceed the amount set for witness fees by Part 11 of Title 25 of the Code of Federal Regulations. Mileage fees shall not exceed the Federal mileage rate.

CHAPTER SIX

JURORS

Section 601. Meeting for Selection of Jurors

(a) On the first Monday in November, or as soon thereafter as may be, and, at any time upon the order of the Chief Justice of the Supreme Court, the Jury Selection Board, composed of the Tribal Secretary or one of his deputies, the Tribal Tax Director or one of his deputies, the Chief of the Tribal Police or one of his deputies, the Chairman of the Board of Commissioners of the Tribal Housing Authority or his designate, the Court Clerk or one of his deputies, and one of the Judges of the Court, shall meet at the office of the Court Clerk and select from a list to be compiled of all qualified jurors, as prescribed in this Chapter, all qualified jurors for service in the Tribal District Court for the ensuing calendar year in the manner hereinafter provided.

(b) For the purpose of ascertaining the named of all persons qualified for jury service, it shall be the duty of the following officers to provide the following lists of qualified prospective jurors to the Court Clerk:

(1) The Tribal Secretary shall supply a list of all enrolled Tribal members of their households over eighteen years of age who are residents of the tribal jurisdiction.

(2) The Tribal Tax Director shall supply a list of all individual taxpayers irrespective of Tribal membership over eighteen years of age who are residents of the tribal jurisdiction.

(3) The Chairman of the Board of Commissioners of the Tribal Housing Authority shall supply a list of all known tenants of the Housing Authority and members of their households irrespective of tribal membership over eighteen years of age who are residents of the tribal jurisdiction.

(4) The Court Clerk shall supply a list of all persons over eighteen years of age irrespective of tribal membership who have registered upon the Court Clerk's Jury Selection Roll for jury service.

(c) Each such list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person within the category on the list.

(d) Whenever possible, these lists shall be prepared at least thirty days prior to the meeting to allow time for the typing of the names contained therein on cards as hereafter provided, or shall be presented typed upon the cards as hereafter provided.

(e) Whenever such is, or may become reasonably available and efficient, the lists may be printed from computer memory on cards in the manner hereafter provided.

Section 602. Court Clerk's Jury Selection Roll

It shall be the duty of the Court Clerk to maintain at all times a jury selection roll upon which any person who is or may be eligible for jury service may enter their name, date of birth, and place of residence. Such roll shall be provided to the jury selection board in order that all qualified persons who may not be identified in paragraphs (1), (2), or (3) of Subsection (b) of Section 601 of this Chapter shall have the opportunity for jury service.

Section 603. Preparation of Jury Wheel

Said officers shall write or cause to be written or typed the names of all persons who are known to be, or may be qualified jurors under the law on separate cards of uniform size and color, writing also on said cards, whenever possible, the post office address of each juror so selected, along with their age or date of birth and place of residence under the direction of the Court Clerk. Whenever such can be avoided, no persons name shall be placed upon more than one card. The expenses of preparation of said cards to be paid from the Court fund. The cards containing said names shall be deposited in a

circular hollow wheel, to be provided for such purpose by the Court Clerk after the Jury Selection Board has examined the contents thereof and removed therefrom and destroyed any cards found therein. Said wheel shall be in the form of a drum made of iron, steel, or other substantial materials, and shall be so constructed as to freely revolve on its axle and big enough to freely mix all the cards placed therein, the size thereof in each case to be determined by the number of names placed therein, and shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the Chief of the Tribal Police, and the other by the Court Clerk. The Chief of the Tribal Police and the Court Clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said Chief of the Tribal Police and Court Clerk shall keep such wheel, when not in use, in a safe and secure place where the same cannot be tampered with.

Section 604. Drawing General Jury Panel

(a) The Judges of the Court shall, more than twenty (20) days prior to each jury docket of Court, determine approximately the number of jurors that are reasonably necessary for jury service in the Court during the jury docket, and shall thereupon order the drawing of such number of jurors from the wheel, said jury to be known as the general panel of jurors for service for the respective jury docket for which they are designated to serve. A majority of said judges, or the Chief Judge are authorized to act in carrying out the provisions of this Section.

(b) The Court Clerk or one of his deputies and the Chief of the Tribal Police or one of his deputies in open court and under the directions of the Chief Judge of the District Court, or during his absence or disability, some other Judge of the District Court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed,

one by one until the number of jurors for jury service as directed by the Court are procured and shall record such names as they are drawn. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person.

(c) Additional and other drawing of as many names as the Court may order may be had at any such time as the Court or Judge may order for the completion of a jury panel, or for the impaneling of a new jury if, in the judgment of the Court, the same shall be necessary, or if, for any cause, the Court, in its discretion, shall deem other jurors necessary. The Court may excuse or discharge any person drawn and summoned as a juror, whenever, in its discretion, such action shall be deemed expedient.

(d) No person may be required, over his objection, to render service as a juror for more than a total of twenty (20) working days in any one calendar year unless, when this time limit is reached, he is sitting upon a panel engaged in the consideration of a case, in which event he may be excused when such case is terminated; provided, that if the Judge is of the opinion that the jury business of a jury docket fixed by the Court may be concluded within six (6) days, he may require a jury, or a juror, to remain until the termination of said jury service. Persons summoned for jury service need not be required to serve during previously fixed days or weeks or a docket fixed by the Court for jury trials, but they may be recalled from time to time as the trial needs of the District Court may require, without regard to the docket term fixed by the Court for jury trials for which they were originally summoned.

Section 605. Use of Jury Panel

The general panel of jurors shall be used to draw juries in all actions tried during the jury docket for which they were summoned. In the event of a deficiency of said general panel at any given time to meet the requirements of the Court, the presiding Judge having control of said general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are not further needed. Resort to the wheel shall be had in all cases to fill out the general panel,

except when only a single jury is needed or when the Court determines that undue delay will be caused thereby to the prejudice of a party, in which case the Court may issue and open venire to the Chief of the Tribal Police or other suitable person for such number of jurors as may be necessary to be selected from the body of the tribal jurisdiction without resort to the jury wheel, provided, that no person shall be called to service or require to serve under an open venire more often than once each year.

Section 606. Certifying and Sealing Lists

The list of names so drawn for the general panel shall be certified under the hand of the Court Clerk for the deputy doing the drawing and the Judge in whose presence said names were drawn from the wheel to be the list drawn by said Clerk for the said jury docket, and shall be sealed up in envelopes endorsed "jurors for the jury docket of the Tribal District Court scheduled to commence on _____" (filling in the blank with the appropriate date) and the Clerk doing the drawing shall write his name across the seals of the envelopes.

Section 607. Oath and Delivery of Envelopes

The judge attending the drawing shall deliver such envelopes to the Court Clerk, or one of his deputies, and the Judge shall, at the same time, administer to the Court Clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of persons appearing on the jury lists until the time a list is opened as prescribed by law at which time it shall be published, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in the Court at the next jury docket, So help you God."

Section 608. Sealing and Retaining Juror Name Cards

When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, endorsed "cards containing the name of jurors for the petit jury for the jury docket of the Tribal District Court commencing on

" (filling in the blank for the date properly); and said envelopes shall be retained securely by the Clerk, unopened, until after the jury has been impaneled for such docket, and, after such jurors so impaneled have served one jury docket, the envelopes containing the cards bearing the names of the jurors for that docket shall then be opened by the Court Clerk, or his deputy, and those cards bearing the names of persons who have been impaneled and who have not served on a jury shall be immediately returned to the wheel by the Court Clerk or his deputy; and the cards bearing the names of the persons serving on a jury shall be put in a box provided for that purpose for the use of the officer who shall next select jurors for the wheel, provided, that no person shall serve as a juror more than once a year, except upon order of the Court for lack of sufficient jurors or as herein provided.

Section 609. Refilling Wheel

If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with law.

Section 610. Summoning Jurors

The summons of person for service on the juries in the District Court shall be served by the Court Clerk by mailing a copy of such summons containing the time, place, and the name of the Court upon which said jurors are required to attend, by registered or certified mail, or as directed by the Judge, to the person selected for service not less than ten (10) days before the day said person is to appear as a juror in the Court. The court clerk shall make a return of such service by filing an affidavit stating the date of mailing and type of

mail used in sending the summons; provided, that this shall not prevent service of special open venire or talesman by the Chief of the Tribal Police.

Section 611. On-Call System jurors

(a) When an on-call system is implemented by order of the Chief Judge of the District Court, each juror retained for services subject to call shall be required to contact a center for information as to the time and place of his next assignment.

(b) For purposes of this Section, "on-call" system" means a method whereby the Chief Judge of the District Court estimates the number of jurors required for a jury docket of court, and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed.

(c) Pursuant to summons for service on petit juries in the District Court, each qualified, nonexempt juror is retained for service subject to call and is assigned to a judge or a case.

Section 612. Drawing Trial jurors From Panel

Prospective jurors for the trial of an action shall be drawn by the Court Clerk, in open Court in the presence of a Judge, by lot either by wheel, by numbering the prospective juror available to be called, or by some similar form of random drawing approved by the Court. The initial six jurors shall be drawn as shortly before the trial of the action as is reasonably practical in the discretion of the Court. As prospective jurors are removed or dismissed by challenge, whether preemptory or for cause, the Clerk shall draw another named from the general pool who shall take the place of the challenged prospective juror and be subject to voir dire to the same extent as the prospective jurors originally chosen.

Section 613. Qualifications and Exemptions of Jurors

(a) All members of the Tribe and other citizens of the United States who are over eighteen years of age and have resided within the Tribal jurisdiction for a period of thirty (30) days, who are of sound mind and discretion and of good moral character are competent to act as jurors, except as herein provided.

(b) The following persons are not qualified to serve as jurors:

(1) Justices of the Supreme Court of the Tribe, or the employees in their office.

(2) Judges or Magistrates of the District Court, or the employees in their office.

(3) The Court Clerk, or the employees in his office.

(4) The Chief of the Tribal Police, his deputies, and the employees in the Police Department.

(5) Jailers having custody of prisoners, or other tribal, state, or federal law enforcement officers.

(6) Licensed Attorneys or Advocates engaged in the practice of law.

(7) Persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when any such person has been fully restored to his civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror.

(8) Elected Tribal Officials.

(c) Persons over seventy (70) years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time fire department employees, and women with otherwise unattended minor children

not in school may be excused from jury service by the Court, in its discretion, upon request.

(d) Any tribal member, tribal taxpayer, or person employed within the Tribal jurisdiction may serve as a juror notwithstanding that they are not a residence of the Tribal jurisdiction if they volunteer to do so by signing the Jury Selection Roll maintained by the Court Clerk.

Section 614. Substantial Compliance

A substantial compliance with the provisions of this Chapter, shall be sufficient to prevent the setting aside of any verdict rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same, resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the Court at or before the time the jury is sworn to try the cause.

Section 615. Oath to Jury

After selection of the jury, and prior to the opening statements of the parties, the Court or Clerk shall place the jury under oath or affirmation to well and truly try and determine the action before them exclusively upon the evidence presented in the Court and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

Section 616. Discharge of Employee for Jury Service - Penalty

Every person, firm, or corporation who discharges an employee or causes an employee to be discharged because of said employee's absence from his employment by reason of said employee's having been required to serve as a juror on a jury of the Tribal District Court, or any other Court, shall be guilty of an Offense, and, upon conviction thereof, shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

Section 617. Civil Liability - Damages

Every person, firm, or corporation who discharges or causes to be discharged an employee because of said employee's absence from his employment by reason of said employee's having been required to serve as a juror on a jury, in the Tribal District Court or any other Court, shall be liable to the _person so discharged in a civil action at law for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining, if any, and a reasonable attorney fee to be determined by the Court.

CHAPTER SEVEN

TRIALS

Section 701. Trial Defined

A trial is a judicial examination of the issues, whether of law or fact, in an action.

Section 702. Trial of Issues

Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered, as hereinafter provided. All other issues of fact shall be tried to the Court.

Section 703. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Tribal Constitution or a statute of the Tribe, or the Indian Civil Rights Act of 1968 shall be preserved inviolate. In all actions, except forcible entry and detainer, arising in contract or tort where the amount in controversy, or the value of the property to be recover, as stated in the prayer for relief or an affidavit of a party, or as found the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds Ten Thousand. Dollars, except as' otherwise specifically provided by law, and in all actions for the involuntary removal of children from the custody of their parents or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.

(b) Demand. Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Tribe by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last

pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court Clerk a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be, reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action, without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for persons proceeding in forma pauperis.

(c) Same; Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this section and to file it as required by Section 231(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the Court in other actions, in the following manner: By the consent of the party appearing, when the other party fails to appear at the trial by himself for attorney. By written consent, in person or by attorney, filed with the clerk. By oral consent, in open court, entered on the journal.

Section 704. Trial by jury or by the Court

(a) By Jury. When Trial by jury has been demanded as provided in Section 703, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

(1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury;

(2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution and ordinances of the Tribe, or under the Indian Civil Rights Act.

(b) By the Court. Issues not demanded for trial by jury as provided in Section 703 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the Court upon motion or its own initiative may try any issue with an advisory jury or, except in actions against the Tribe when a statute of the Tribe provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Section 705. Assignment of Cases for Trial

The District Court shall provide by rule for the placing of actions upon the trial calendar

(1) without request of the parties or

(2) upon request of a party and notice to the other parties or

(3) in such other manner as the Courts deem expedient. Precedence shall be given to actions entitled thereto by any statute of the Tribe.

Section 706. Consolidation; Separate Trials

(a) Consolidation. When different actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) Separate Trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act, the Tribal Constitution or as given by a statute of the Tribe.

SUBCHAPTER A
IMPANELING JURYSection 721. Summoning Jury

The general mode of summoning and impaneling the jury, in cases in which a jury trial may be had, is such as is or may be provided by Chapter 6 of this Act.

Section 722. Causes for Challenging Jurors

If there shall be impaneled, for the trial of any action, any juror, who shall be been convicted of any crime which by law renders him disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same claim; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the second degree by blood or marriage, he may be challenged for such causes; in either of which

cases the same shall be considered as a principal challenge, and the validity thereof be tried by the Court; and any juror who shall be returned upon the trial of any of the causes herein before specified, against who no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other cause that may render him, at the time, an unsuitable juror; but a resident or taxpayer of the tribal jurisdiction, or a member of the Tribe or my municipality therein shall not be thereby disqualified in actions in which the Tribe or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

Section 723. Examination of Jurors

The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

Section 724. Alternate Jurors

The Court may direct that not more than three jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional peremptory challenges may be used against an

alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Section 725. Order of Challenges

_The plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then, in turn, in the same order, have the right to challenge one juror each, until each shall have peremptorily challenged three jurors, but no more.

Section 726. Challenges to Jurors - Filling Vacancies

After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as peremptorily.

Section 727 Alternate Method of Selecting Jury

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in an action be selected by calling and seating twelve prospective jurors in the jury box and then examining them on voir dire; when twelve such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names each from the list of those so passed for cause, and the remaining six persons shall be sworn to try the case.

If there be more than one defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, allow each defendant to strike three names from the list of jurors seated and passed for cause. In such case he shall appropriately increase the number of jurors initially called and seated in the jury box for voir dire examination.

Section 728. Oath of Jury

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

Section 729. Juries of Less Than Six - Majority Verdict

All juries shall be composed of six persons, and a unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six and greater than two, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

SUBCHAPTER B
TRIAL PROCEDURE

Section 731. Order of Trial

When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

- (a) The party on whom rests the burden of proving the issues may briefly state his case, and the evidence by which he expects to sustain it.
- (b) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.
- (c) The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of

the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleadings or the proof shall demand.

(d) If the motion for a directed verdict be overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.

(e) The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the original case.

(f) After the close of the evidence, and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total time for argument if time restrictions are placed thereon.

(g) After the closing arguments of the parties have been completed, the Court shall instruct the jury as the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.

(h) The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference, and the jury shall retire to determine its verdict.

Section 732. Taking of Testimony

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an ordinance of the Tribe or by this Act, the Tribal Rules of Evidence, or other rules adopted by the Supreme Court of the Tribe.

(b) Affirmation in Lieu of Oath. Whenever under this Act an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the _respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(d) Interpreters. The Court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

Section 733. Exceptions Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; but it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Section 734. Instruction to Jury - Objection

(a) At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto or proposes the requested instruction before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(b) All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case.

(c) When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, to that either party may except to the instructions as asked for, or as modified, or to the modification, or to the refusal.

(d) All instructions given by the Court must be numbered, signed by the judge and filed together with those asked for by the parties as a part of the record.

Section 735. Uniform jury Instructions

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

Section 736. Objections to Instructions - Copies to Parties

A party objecting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open Court, out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court that is expected to. Provided, further, that the Court shall furnish copies of the instructions to the Plaintiff and Defendant prior to the time said instructions are given by the Court.

Section 737. View by jury

Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, - other than the person so appointed, shall speak to them on any subject connected with the trial.

Section 738. Deliberations of the Jury

When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the Court, to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and he shall not, before their Court is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Section 739. Admonition of Jury on Separation

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and, that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them.

Section 740 Information After Retirement

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their Counsel. Upon motion in appropriate circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

Section 741. When the Jury may be Discharged

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no probability of their agreeing.

Section 742. Re-trial

In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the Court may direct.

Section 743. Proof of Official Record

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any Indian Tribal jurisdiction, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific

Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public office having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certification of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this Section in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this Section for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Section 744. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

Section 745. Appointment and Duties of Masters

(a) Appointment and Compensation. The District Court with the concurrence of a majority of all the Judges thereof may appoint one or more standing masters, and the trial judge, in an appropriate case, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court as the Court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In action to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matter of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order or reference and has the authority to put witnesses on oath and may himself examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Section 732(c) for a Court sitting without a jury.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex

parte, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Section 222. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Section 412(b) and 222(f).

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(1) Content and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-jury Actions. In an action to be tried without a jury the Court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon

objections thereto shall be by motion and upon notice as prescribed in Section 240 (d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

SUBCHAPTER C VERDICT

Section 751. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 907; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered

as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Section 112(b) or Section 121(b).

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Section 108. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the District Court an objection to such findings or has made a motion to amend them or a motion for judgment.

Section 752. Delivery of Verdict

When the jury have agreed upon their verdict they must be conducted into Court, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the Clerk or the court asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent, for further deliberation.

Section 753. Requisites of Verdicts

The verdict shall be written, signed by the foreman and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the Court.

Section 754. General and Special Verdict

The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts, as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from them conclusions of law.

Section 755. Special Verdict and Interrogatories

(a) Special Verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waived his right to a trial by jury of the issue so omitted unless before the jury retires he demand its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, it fails to do so it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent with each other, judgment shall be entered thereon, but, when the

answers to one or more interrogatories in inconsistent with the general verdict, judgment may be entered pursuant to Section 907 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Section 756. Jury Must Assess Amount of Recovery

When, by the verdict either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

Section 757. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

(a) Motion for Directed Verdict: When Made; Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefor. The order of the Court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury

has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict had been directed. If no verdict was returned the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subsection (b) of this Section, is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the Supreme Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Supreme Court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Section 908 not later than 10 days after entry of the judgment notwithstanding the verdict.

(d) Same: Denial of Motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, nothing in this

Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

SUBCHAPTER D MISCELLANEOUS TRIAL PROVISIONS

Section 771. Provisions Applicable to Trials by Court

The provisions of this Chapter respecting trials by jury apply, so far as they are in their nature applicable, to trials by the Court.

Section 772. Trial Docket

A trial docket shall be made out by the Clerk of the Court, at least fifteen days before the first day of each jury or non-jury docket of the Court, and the actions shall be set for particular days in the order prescribed by the Judge of the Court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day. The trial docket shall be promptly mailed by the Clerk to each party or their attorney of record whose action is placed on the trial docket.

Section 773: Trial Docket for Bar

The Clerk shall make out a copy of the trial docket for the use of the bar, before the first day of the docket of the Court and cause the same to be available to the public.

Section 774. Order of Trial' of Cases Docketed

The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by the request of the parties with the approval of the Court, or the order of the Court, they are continued or placed at the heel of the docket, unless the Court, in its discretion, shall otherwise

direct. The Court may, in its discretion, hear at any time a motion, and may by rule prescribe the time for hearing motions.

Section 775. Time of Trial

(a) Actions shall be triable at the first trial docket of the Court, after or during which the issues therein, by the time fixed for pleading are, or shall have been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand for trial at such term twenty (20) days after the issues are made up and discovery completed, and shall, in case of default, stand for trial forthwith.

(b) The Court shall arrange its business so that two non-jury trial dockets and two jury trial dockets are completed during each calendar year, unless the majority of the judges of the Court by order determine that additional trial dockets are necessary to promptly dispose of the cases pending before the Court.

Section 776. Continuances

The trial of an action shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court.

Section 777. Trial by .Judicial Panel

(a) The Supreme Court may provide by rule for the trial of any action in the District Court by judicial panel in any or all cases when no jury is allowed by law or demanded by the parties. The judicial panel shall consist of the presiding judge to whom the case was assigned, who shall make all rulings or questions of law during the trial of the action, and two or more judges, special judges, or magistrates who shall hear the evidence. The Chief Justice of the Supreme Court, with the consent of the majority of the active Judges of the Supreme Court, is hereby authorized to freely appoint any person licensed to practice law before the Court as a Special Judge for

the purpose of sitting upon a judicial panel, and may compensate such person out of the Court fund reasonable compensation for his services, in an amount not exceeding the daily rate paid to regular Judges of the Court.

(b) The judicial panel shall jointly, by majority vote, determine the facts proved by the evidence and the panel shall enter findings of fact and conclusions of law as in a trial before a single Judge.

(c) In a trial before a judicial panel, the votes of the Judges on the panel shall not be revealed, but the verdict and judgment shall be entered in accordance with the panels findings of fact and conclusions of law.

Section 778. Bifurcated Jury Trials

(a) The Supreme Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict upon the issue of liability, and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.

(b) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part or a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages.

(c) In any such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in Subsections (a) and (b) of this Section by stipulation of the parties.

CHAPTER EIGHT

PROVISIONAL AND FINAL REMEDIES AND SPECIAL
PROCEEDINGSSection 801. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Tribe, existing at the time the remedy is sought.

Section 802. Receivers Appointed by Tribal Courts

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with Tribal probate law, or, if none, then the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the District Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Act.

Section 803. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court under this Section shall be deposited and withdrawn in accordance with tribal law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the Tribal procedure for the administration and accounting of federal grant monies, upon order of the Court.

Section 804. Process in Behalf of and Against Persons no Parties

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Section 805. Security - Proceedings Against Sureties

Whenever this Act or other Tribal law requires or permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties of their addresses are known.

Any surety authorized to give a bond or stipulation or other undertaking in either the Federal courts or the State courts within the State within which any portion of the tribal jurisdiction lies, and any individual approved by the Court who resides within the jurisdiction of Tribe (except officers of the Court or elected Tribal officials) shall be eligible to give such bond or stipulation, or undertaking in the District Court under this Act of other Tribal law unless otherwise prohibited by tribal law.

Section 806. Execution

(a) In General. Process to enforce a judgment for the payment of money shall a writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of

record, may obtain discovery from any person, including the judgment debtor, in the manner provided in this Act.

(b) Against Certain Public Officers. When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Tribe or against an officer, or employee, or agency of the Tribe in their official capacity; or if judgment is entered against an individual in his personal capacity who purported to act as an officer or employee of the Tribe, and the Court has given certificate of probable cause for his act wherein the Court determines that the individual had probable cause to believe that his action was authorized by the Tribe in his official capacity, execution shall not issue against the officer or his property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the legislative body of the Tribe deems permissible considering the extent of available tribal resources) from available tribal funds. This section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

SUBCHAPTER A INJUNCTIONS

Section 811. Injunction Defined

The injunction provided for by this Chapter is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

Section 812. Cause for Injunction - Temporary Restraining Order

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is

about to do, or is procuring or suffering to be done, some act in violation of the plaintiffs rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

Section 813. Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney only if:

(a) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(b) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the

motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) day's notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Section 814. Temporary Restraining Order - Service

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

Section 815. Preliminary Injunction

(a) Notice. No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the removing party.

(b) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This Subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

Section 816. Preliminary Injunction - Criteria

Unless a statute of the Tribe provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

(a) There is a substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief, and

(b) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and

(c) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party, and

(d) The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Tribe or the United States.

Section 817. Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, Agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Section 818.
Constitutional Cases

Employer and Employee; Interpleader:

This Subchapter does not modify any statute of the Tribe relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

Section 819. Security

(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs, damages, and a reasonable attorney fee as may be incurred or suffered by any part who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Tribe or of an officer or agency thereof.

(b) The provisions of Section 805 apply to a surety upon a bond or undertaking under this Section.

(c) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appear that the surety in the undertaking has removed from the Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

Section 820. Use of Affidavits

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

Section 821. Injunction by Defendant

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the manner herein before prescribed.

Section 822. Injunction is Equitable

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The District Court shall not enjoin the enforcement of the Tribal tax laws or the collection of tribal taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by tribal law or the Indian Civil Rights Act.

Section 823. Modification of Preliminary Injunction

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk of the Court and recorded.

Section 824. Modification of Permanent Injunction

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the

facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties.

Section 825. Injunctions Tried to the Court

All injunctive actions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Section 704(c) of this Act.

Section 826. Enforcement of Restraining Orders and Injunctions

A restraining order of injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt, by the Court or any Judge who might have granted it. An attachment may be issued by the Court of Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars (\$200.00) for each day of, or separate act of, contempt, to be paid into the Court fund, or by confinement in the Tribal jail for not longer than sixty (60) days.

SUBCHAPTER B REPLEVIN

Section 831. Order of Delivery - Procedure

(a) - The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

(1) The complaint must allege facts which show:

- (i) a description of the property claimed,
 - (ii) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property,
 - (iii) that the property is wrongfully detained by the defendant,
 - (iv) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,
 - (v) that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Act, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, and,
- (2) The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.
- (3) A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the

order for pre-judgment delivery of the property should issue according to the probable merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 833 of this Act.

(4) Nothing in this Act contained shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings at any time after institution thereof.

(b) Where the notice that is required by subsection (a) of this Section cannot be served on the defendant but the Judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the pre-judgment delivery of the property. If an order for the pre-judgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Tribal Police shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice filed before the Chief of the Tribal Police turns the property over to the plaintiff, the Chief of the Tribal Police shall retain control of the property pending the hearing on the motion.

(c) The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the tribal jurisdiction pending the hearing on plaintiffs request for an

order for the pre-judgment delivery of the property, and said order may be served with the summons.

Section 832. Penalty for Damage of Property Subject to Order of Delivery

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Act, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than five Hundred Dollars (\$500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed bases on tortious conduct and enforced accordingly.

Section 833. Undertaking in Replevin

The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the Tribe or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall

be filed with the Clerk of the Court, and shall be subject to the provisions of Section 805 of this Act.

Section 834. Replevin Bond - Value

On application of either party which is made at the time of executing the replevin bond or the re-delivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 833 and 838 of this Act.

Section 835 Order of Delivery

The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the Chief of the Tribal Police. It shall state the names of the parties, the Court in which the action is brought, and command the chief of the Tribal Police to take the property, describing it, and deliver it to the plaintiff as prescribed in this Act, and to make return of the order on a day to be named therein.

Section 836. Order Returnable

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten days after it is issued.

Section 837. Execution of Order

The Chief of the Tribal Police shall execute the order by taking the property- therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place such property was seized.

Section 838. Re-delivery on Bond

If, within three working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court or the Chief of the Tribal Police, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of the Tribal Police shall return the property to the defendant. If such undertaking be not given within three working days after service of the order, the Chief of the Tribal Police shall deliver the property to the plaintiff.

Section 839. Exception to Sureties

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make such order as is just to safeguard the rights of the parties.

Section 840. Proceedings on Failure to Prosecute Action

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action be dismissed, or if he otherwise fail to prosecute his action to final judgment, the Court shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

Section 841. judgment - Damages - Attorney Fees

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been

delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, an damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

Section 842. Officer May Break 'Into Buildings

The Chief of the Tribal Police or other law enforcement officer, in the execution of the order of delivery issued by the Tribal Curt, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if not person having charge thereof is present.

Section 843. Compelling Delivery by Attachment

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Subchapter.

Section 844. Improper Issue of Order of Delivery

Any order for the delivery of property issued under this Subchapter without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

Section 845. Joinder of Cause of Action for Debt - Stay of judgment

In any action for replevin in the Tribal Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

SUBCHAPTER C
ATTACHMENT

Section 851. Grounds for Attachment

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

(a) When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of the tribal jurisdiction (but no order of attachment shall be issued on this clause for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the tribal jurisdiction), or

(b) When the defendant, or one of several defendants, has absconded with intention to defraud his creditors, or

(c) Has left the tribal jurisdiction to avoid the service of summons, or

(d) So conceals himself that a summons cannot be served upon him, or

(e) Is about to remove his property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his creditors, or

(f) Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors, or

(g) Has property or rights in action, which he conceals, or

(h) Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors, or

(i) Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought, or

(j) Where the damages for which the action is brought are for injuries arising from the commission of a criminal offense, or

(k) When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery, or

(l) When the action is brought by the Tribe, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Tribal tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owned to the Tribe.

Section 852. Attachment Affidavit

An order of attachment may be issued by the Court when:

(a) There is filed in the office of the court clerk a civil complaint stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:

(1) The nature of the plaintiffs claim,

(2) That is just,

(3) The amount which the affiant believes the plaintiff ought to recover, and,

(4)) The existence of some one of the grounds for an attachment enumerated in Section 851 of this Subchapter.

(b) The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

(c) The defendant has been served with a notice, issued by the Clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiffs application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

(d) If no written objection is filed within the five day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five day period, the Court shall, at the request of either party, set the matter for prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 853 of this Act. The Tribe and its agents shall not be required to execute an undertaking.

(e) If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in Section 891.19 of this Act.

Section 853. Attachment Bonds

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiffs claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney fee's incurred as a result of a wrongful attachment. No bond shall be required of the Tribe.

Section 854. Order of Attachment

The order of attachment shall be directed and delivered to the Chief of the Tribal Police. It shall require him to attache the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the tribal jurisdiction not exempt by law from being applied to the payment of the plaintiffs claim, or so much thereof as will satisfy the plaintiffs claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding one hundred dollars (\$100.00).

Section 855. When Returnable

The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty days of the date of issuance.

Section 856. Order of Execution

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the Chief of the Tribal Police.

Section 857-. Execution of Attachment Order

The order of attachment shall be executed by the Chief of the Tribal Police without delay. He shall go to the place within the tribal jurisdiction where the defendant's property may be found, and

declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

Section 858. Service of Order

(a) When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the Court.

(b) When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed of record in the land tract book maintained by the Court Clerk.

Section 859. Re-delivery on Bond

The Chief of the Tribal Police shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the Chief of the Tribal Police, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action.

SUBCHAPTER D GARNISHMENT

RESERVED FOR FUTURE PROVISIONS RELATING TO
GARNISHMENT.

SUBCHAPTER E
PROVISIONS RELATING TO ATTACHMENT AND
GARNISHMENT

RESERVED FOR FUTURE PROVISIONS RELATING TO BOTH
ATTACHMENT AND GARNISHMENT

SUBCHAPTER F
RECEIVERS

Section 892.1. Appointment of Receiver

A receiver may be appointed by the Supreme Court, the District Court, or any Judge of either:

(a) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interest in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

(b) In an action by a mortgage for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgage property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

(c) After judgment, to carry the judgment into effect.

(d) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

(e) In the cases provided in this Act, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(f) In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.

Section 892.2. Person Ineligible

No party, or attorney, or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

Section 892.3. Oath and Bond

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

Section 892.4. Powers of Receiver

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such act respecting the property as the Courts may authorize.

Section 892.5 Investment of Funds -

Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action, or except by

order of the Court when the principal and interest earned thereon or guaranteed by the Federal Government and may be withdrawn within a reasonable time.

Section 892.6. Disposition of Property Litigated

(a) When it is admitted, by the pleadings or oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery, which, is held by him as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further direction of the Court.

(b) Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.

(c) Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section, and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.

(d) In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.

Section 892.7 Punishment for Disobedience of Court

Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Chief of the Tribal Police to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court.

Section 892.8. Vacation of Appointment by Supreme Court

In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same to be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the Tribe, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner. thereof, upon the filing and approval of said bond.

SUBCHAPTER G EMINENT DOMAIN

Section 893.1 Who May Exercise Authority

The Tribal Legislative Body, and any officer or Agency of the Tribe specifically authorized to do so by statute may obtain real or

personal property by eminent domain proceedings in conformance with the Tribal Constitution, the Indian Civil Rights Act, and this Subchapter.

Section 893.2 What Property May be Condemned by Eminent Domain

Except property made exempt from eminent domain by the Tribal Constitution and statutes, all property real and personal within the tribal jurisdiction, not owned by the Tribe and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or Tribe, or property held by an Indian or Tribe subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or tribally granted assignment, or other non-trust right to use such trust or restricted property conveyed by tribal or federal law shall be subject to eminent domain in conformance with the Tribal Constitution and statutes and the Indian Civil Rights Act.

Section 893.3 Condemnation of Property

- (a) Applicability of Other Rules. The Rules of Civil Procedure for the Courts of the Tribe govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this subchapter.
- (b) Joinder of Properties. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.
- (c) Amount to be Paid. The owner shall be entitled to receive just compensation for all property or rights to property taken from him in eminent domain proceedings.

Section 893.4. Complaint

(a) Caption. The complaint shall contain a caption as provided in Section 110(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 893.5 of this Subchapter upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 893.6 of this Subchapter. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(c) Filing. In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

Section 893.5. Process in Eminent Domain

(a) Notice; Delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices

directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.

(b) Same; Form. Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) Service of Notice.

(1) Personal Service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.

(2) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may

be served by publication in a like manner by a notice addressed to "Unknown Owners."

(3) When Publication Service Complete. Service of publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiffs attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(d) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons.

Section 893.6. Appearance or Answer

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within 20 days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objection not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

Section 893.7 Amendment of Pleadings

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 893.9 of this Subchapter. The

plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 231(b) of this Act, upon any party affected thereby who has appeared and, in the manner provided in Section 893.9 of this Subchapter, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by Section 893.6 of this subchapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

Section 893.8 Substitution of Parties

If a defendant dies or becomes incompetent or transfers his interest after his, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 893.5(c).

Section 893.9 Dismissal of Action

(a) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed or whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby.; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.

(c) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, without awarding just compensation of the possession, title or lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed One Thousand Dollars (\$1,000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

Section 893.10. Deposit and Its Distribution

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the Court shall enter judgment against him and in favor of the plaintiff for the overpayment.

Section 893.11 Costs

Costs shall normally be paid by the Plaintiff in condemnation actions unless the Court, in its discretion determines that a defendant should pay their own costs, which may include a reasonable portion of plaintiffs costs because of inequitable conduct or other statutory reason.

CHAPTER NINE

JUDGMENTS

Section 901. Judgments — Costs

(a) Definition; Form. "Judgment" as used in this Act includes a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims, or rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at anytime before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment; Default. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provision therefor is made either in a statute of the Tribe or in this Act, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs, including attorney fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Tribe, its officers, and agencies shall be imposed only to

the extent specifically permitted by tribal law. A general statement in this Act that such are payable by a party or by the plaintiff or defendant is not authority to impose such costs, damages, or requirements upon the Tribe, its officers, and agencies. Costs may be taxed by the clerk on one day's notice. On motion served within 10 days thereafter, the action of the clerk may be reviewed by the Court.

(e) Applied to Probate Proceedings. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal District Court in the distribution of decedent's estates.

Section 902. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this Act and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the clerk. When the plaintiffs claims against a defendant is for a sum certain or for a sum which can, by computation, be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the

application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Tribe.

(c) Setting Aside Default. For good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Section 909(b).

(d) Plaintiff, Counterclaimants, Cross-Claimants. The provisions of this Section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Section 901(c).

(e) Judgment Against the Tribe. No judgment by default may be entered against the Tribe, its officers, or agencies unless sixty days written notice has been served upon the Chief Executive Officer and the Tribal Legislative Authority. If during such sixty day period the Tribe is without counsel, and the Tribe has submitted to the Bureau of Indian Affairs an attorney contract for approval, no default may be entered until thirty days after approval of the contract. During such period, the Tribe, its agencies, or officers shall be allowed to cure any default. No judgment by default shall be entered against the Tribe, its agencies, or officers in any case unless the claimant establishes his claim or right to relief, including this authority to bring the suit, and his damages by evidence satisfactory to the Court.

Section 903.- Offer of Judgment-

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property

or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Section 904. Judgment for Specific Acts — Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the tribal jurisdiction, and the interest in said property at issue in the action is not held in trust by the United States as Indian lands, the Court in lieu of directing a conveyance of that interest may enter a judgment divesting the interest from any party and vesting it in others and -such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application.

Section 905. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any party thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. -Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Section, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Section, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 906. Declaratory Judgments

The procedure for obtaining a declaratory judgment in actions arising in equity, or through contract, or pursuant to any specific Tribal law authorizing a declaratory judgment, shall be in accordance with this Act, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Sections 703 and

704. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Section 907. Entry of judgment

(a) Subject to the provisions of Section 901(b), the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it:

(1) upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court,

(2) upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories.

(b) Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court.

Section 908. New Trials — Amendments of Judgments

(a) Grounds. A new trial is a re-examination in the same Court, of an issue of fact, or of law, or both and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:

(1) Irregularity in the proceedings of the Court, jury, referee, or prevailing party, or any order of the Court or referee, or abuse of discretion, by which the party was prevented from having a fair trial, or

- (2) Misconduct of the jury or prevailing party, or
- (3) Accident or surprise, which ordinary prudence could not have guarded against, or
- (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice, or
- (5) Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property, or
- (6) That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law, or
- (7) Newly-discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial, or
- (8) Error of law occurring at the trial, and objected to by the party making the application, or
- (9) When, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one year from the date of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Court for good

cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the Court of its own initiative may order a new trial for any reasons for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend an Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Section 909. Relief From judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Section 908(b); (3) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection (b) does not affect the finality of a judgment or suspend its operation. This Section does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified of the proceedings, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this Act or by an independent action.

Section 910. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Section 911. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions-Injunctions, Receiverships, and Patent Accountings. Except as stated in this Act, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the Court, an interlocutory or final judgment in an action for an injunction or in a receivership action; or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) of this Section govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the deposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 908, or of a motion or relief from a judgment or order made pursuant to Section 909, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Section 757, or of a motion for amendment to the findings or for additional findings made pursuant to Section 751(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supercedeas bond may obtain a stay subject to the exceptions contained in subsection (a) of this Section. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court

(e) Stay in Favor of the Tribe or Agency Thereof. When an appeal is taken by the Tribe or an officer or agency thereof or by direction of any department of the Government of the Tribe, the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Power of the Supreme Court Not Limited. The provision in this Section do not limit any power of the Supreme Court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) Stay of Judgment as to Multiple Claims or Multiple Parties. When the Court has ordered a final judgment under the conditions stated in Section 901(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Section 912. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under this Act after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Section 913. Reserved

Section 914. Judgment Against Infant

It shall not be necessary to reserve in a judgment or order the right of a minor to show cause against it after his attaining full age; but in any case in which such reservation would be proper, the minor, within two (2) years after arriving at the age of eighteen (18) years, may show cause against such order or judgment.

Section 915. Judgments as Liens

Judgments of the Tribal Court and the Courts of the United States shall be liens on real estate of the judgment debtor within the tribal jurisdiction from and after the time a certified copy of such judgment has been filed in the Court Clerk's land tract records book. A five dollar (\$5.00) fee shall be collected for each requested filing in

the land tract records book. No judgment whether rendered by the Tribal Court or a Court of the United States shall be a lien on the real estate of a judgment debtor until it has been filed in this manner. Execution shall be issued only by the Tribal Court.

Section 916. Discharge of Money judgment Liens

In the event of an appeal to the Tribal Supreme Court from a money judgment, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was rendered, shall cease upon the judgment debtor or debtor's depositing, with the Court Clerk of the Tribal District Court, cash sufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the judgment debtor or debtors, that such deposit is made to discharge the lien of such judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the Court Clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of case received upon the civil appearance docket in the action, upon the judgment docket opposite the entry of such judgment, and upon the land tract records book if the judgment has been filed therein. It shall further be the duty of the Court Clerk to deposit the case so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any judgment that might be rendered against the depositor or depositors, and to refund any balance in excess of any such judgment to the depositor or depositors, or, in the event the action be finally determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors.

Section 917. Additional Case Deposits

A judgment creditor may, at any time, upon reasonable notice to the judgment debtor or debtors, move the Court for the deposit of additional cash; and if it appears that the case which has been deposited is insufficient to cover the whole amount of the judgment,

including interest, costs and any attorney fees, together with costs and interest on the appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the Court, the judgment shall be revived and attachment may be issued thereon.

Section 918. Reversal By Supreme Court

In the event of a reversal of the judgment by the Supreme Court, no money deposited to discharge the lien of such judgment shall be refunded by the Court Clerk until final disposition of the action.

Section 919. Interest on Money judgments

All money judgments of the Tribal District Court shall bear interest at the rate of ten percent (10%) simple interest per annum, except authorized judgments against the Tribe, its political subdivisions, and agents in their official capacity which judgments shall not bear interest unless such is specifically provided for, provided that when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by Tribal law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

Section 920. Exempt Property

The following property shall be exempt, except as to enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the Tribal District Court:

(a) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal

minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.

(b) One automobile of fair market value not exceeding One Thousand Dollars (\$1,000.00) .

(c) Tools, equipment, utensils, or books necessary to the conduct of the persons business but not including stock or inventory.

(d) Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(e) Any dwelling used as the actual residence of the judgment debtor, including up to five acres of land upon which such dwelling is located whether such dwelling is own or leased by the judgment debtor.

(f) Household goods, furniture, wearing apparel, personal effects, but not including televisions, radios, phonographs, tape recorders, home computers, (not otherwise exempt) more than two (2) firearms, works of art, and other recreational or luxury items.

(g) One horse, one bridle, and one saddle.

(h) All implements of husbandry used upon the homestead, not more than four cows with their immature offspring, two hogs with their immature offspring, ten chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one year.

(i) All ceremonial or religious items.

Section 920.1. Payment of judgments From Individual Indian Moneys

Whenever the Tribal District court shall have ordered payment of money damages to an injured party and the debtor refuses or neglects to make such payment within the time set for payment by

the Court, or when an execution is returned showing no property found, and when the debtor has sufficient funds to his credit at any Bureau of Indian Affairs Agency Office to pay all or part of such judgment, the Clerk of the Tribal District Court, upon request of the judgment creditor, shall certify the record to the superintendent of the agency, who shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the judgment creditor the amount of the judgment, or such lesser amount as may be specified by the Secretary from the account of the judgment debtor.

SUBCHAPTER A

FOREIGN JUDGMENTS

Section 921. Definition

In this act "foreign judgment" means any judgment, decree, or order of a Court of the United States, any Indian Tribe, or of any other Court which is entitled to comity or full faith and credit in the Tribal Court.

Section 922. Filing and Status of Foreign judgments

A copy of any foreign judgment authenticated in accordance with the applicable act of Congress or of the statutes of the Tribe may be filed in the office of the Court Clerk. The clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal District Court. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating', or staying as a judgment of the Tribal District Court and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until a certified copy of the judgment so filed is also filed in the office of the Court Clerk as provided by law in the land track record book.

Section 923. Grounds for Non-Recognition

(a) A foreign judgment is not conclusive if

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by fraud;

(3) The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was seriously inconvenient forum for the trial of action.

Section 924. Notice of Filing

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the Court an affidavit setting forth the name and last known post-office address of the judgment debtor, and of the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed.

Section 925 Stay of Execution of Foreign Judgment

(a) If the judgment debtor shows the Tribal District Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the law of the jurisdiction in which it was rendered.

(b) If the judgment debtor shows the Tribal District Court any ground upon which enforcement of a judgment of the Tribal Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in the Tribal jurisdiction.

Section 926. Fees

Any person filing a foreign judgment shall pay to the Court Clerk those fees now and hereafter prescribed by the statute or by authorized Court rule for the filing of an action in the Court. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgments of the Tribal District Court.

Section 927. Optional Procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceedings under this subchapter remains unimpaired.

SUBCHAPTER B

EXECUTION

Section 931. Executions - Defined

Executions shall be deemed process of the Court, and shall be issued by the clerk, and directed to the Chief of the Tribal Police.

Section 932. Kinds of Executions

Executions are of three kinds:

- (a) Against the property of the judgment debtor.

For the delivery of possession of real or personal property, with damages for withholding the same, and costs.

- (b) Executions in special cases.

Section 933. Property Subject to Levy

Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided.

Section 934. Property Bound After Seizure

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

Section 935. Execution Must Be Issued Within Five Years

If execution is not issued and filed as provided by this subchapter within five (5) years after the date of any judgment that now is or may hereafter be rendered, in the Tribal Court or if five (5) years have intervened between the date that the last execution on such judgment was filed and the date that writ of execution was filed such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor. Provided, that this section shall not apply to judgments in favor of the Tribe its subdivisions or agents.

Section 936. Priority Among Property

The writ of execution against the property of the judgment debtor, issuing from the Tribal Court shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

Section 937. Priority Among Executions

When two or more writs of execution against the same debtor shall be sued out and when two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale or this property, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided that nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the property of the judgment debtor.

Section 938. Levy By Priority

The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, "no goods," and forthwith levy the writ of execution upon any interests in the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the interests in such lands and tenements of the debtor which may be liable shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised and sold, subject to such lien or liens, which shall be stated in the appraisement.

Section 939. Who Makes Levy

It shall be unlawful for anyone to levy an attachment or execution within the Tribal jurisdiction who is not a bounded Tribal or Federal Police officer.

Section 940. When Levy Void

Any attachment or execution issued to, or levied by anyone Tribal or Federal Police officer shall be void and of no effect and the

Court Clerk or other person issuing same, or officer or other person levying same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby.

Section 941. Penalty for Unlawful Levy

Anyone violating the provisions of Section 939 of this Act shall be punished by a fine not to exceed one hundred dollars (\$100.00) or confinement in the Tribal jail not to exceed thirty (30) days or both.

Section 942. Levy on Property Claimed By Third Person

If the officer, by virtue of an execution issued from the Tribal Court, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to levy on any such goods and chattels, the officer may require the plaintiff to give him an undertaking, with good and sufficient securities to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property.

Section 943. Re-Delivery to Defendant

In all cases where the Tribal Police Chief or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, of his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in writing, to said defendant in execution, or by advertisement published in a legal newspaper, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him, given, or to pay to the officer holding the execution the full value of said goods and chattels, or the

amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases.

Section 944. Notice of Sale of Chattels

The officer who levies upon goods and chattels, but virtue of an execution issued by the Tribal Court, before he proceeds to sell the same shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisements in five public places in the reservation. Two advertisements shall be put up in the township where the sale is to be held; and where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue at another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as herein before provided.

Section 945. Insufficient

Further Levy When Property Taken

When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in this opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

Section 946. Filing and Indexing of Execution

(a) When a general execution is issued and placed in the custody of the Tribal Police Chief for levy, a certified copy of such

execution shall be filed in the office of the Court Clerk and shall be indexed the same as judgments.

(b) If a general or special execution is levied upon an interest lands and tenements, the Tribal Police Chief shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.

(c) To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the Court.

Section 947. Waiver of Appraisement

It is against the public policy of the Tribe to allow enforcement of execution upon realty without appraisal, and the words "appraisement waived" or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract. They shall be of no effect whatsoever and an appraisal shall be ordered notwithstanding any contract to the contract.

Section 948. Return of Appraisement

The officer receiving such return of appraisement pursuant to Section 946(b) of this Act shall forthwith deposit a copy thereof with the Clerk of the Court and advertise and sell such property, agreeably to the provision of this Act.

Section 949. When Lien Restricted

If, upon such return, as aforesaid, it appear, by the inquisition, that two thirds of the appraised value of said non-trust interest in lands and tenements, so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued

shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds (2/3) of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to affect the sale of lands by the Tribe but all lands, the corporation or associations indebted to the Tribe for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeably to any laws in such cases made and provided.

Section 950. Notice of Sale of Realty

Any non-trust interest in lands and tenements taken on execution shall not be sold until the officer causes public notice of the time and place of sale to be given by publication for two (2) successive weeks in a legal newspaper and by putting up an advertisement upon the Court house door or other public bulletin board within a common area of the Court house and in five (5) other public places in the reservation, two (2) of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty (30) days after the date of the first publication of the notice herein required.

All sales made without such advertisement shall be set aside on motion by the Court to which the execution is returnable.

Section 951. Confirmation of Sale

If the Court, upon the return of any writ of execution, for the satisfaction of which any lands or tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity with the provisions of this Act, the Court shall direct the clerk to make an entry on the journal that the Court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such interest in lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the Court where same shall remain until the Court shall have examined his proceedings as aforesaid, when said clerk of the Court

shall pay the same of the person entitled thereto, agreeably to the order of the Court.

Section 952. Police Chief's Deed

The Chief of the Tribal Police or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by the Chief of the Tribal Police or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, but virtue whereof the said lands and tenements were sold as aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of such interests in real estate in other cases.

Section 953. Advance of Printer's Fees

The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

Section 954. Demand for Printing Fees

Before any officer shall be excused from giving the notification mentioned in Section 952, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, the fees in said section specified.

Section 955. Place of Sale

All sales of interests in lands or tenements under execution shall be held at the Tribal Court house unless some other place within the reservation is designated by the judge having jurisdiction in the case. No Tribal Policeman or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Section 956. Other Executions of Realty Not Sold

If lands or tenements, levied on a aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon.

Section 957 Levy on Realty Under Several Execution

In all cases where two or more executions shall be put into the hands of the Tribal Police or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require the Tribal Policy or other officer to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor or debtors, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in

value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property.

Section 958. Deed by Successor of Officer Making Sale

If the term of service of the Tribal Police Chief or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if the Tribal Police Chief or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding Tribal Police Chief or other officer or the law enforcement officer acting on his behalf, on receiving a certificate from the Court from which the execution issued for the sale of said non-trust interest in lands and tenements, signed by the clerk, by order of said Court, setting forth that sufficient proof has been made to the Court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the Tribal Police Chief or other officer who made the sale had executed the same.

Section 959. Payment to Defendant of Overplus After Sale

If, on any sale made aforesaid, there shall be in the hands of the Tribal Police Chief or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the Tribal Police Chief or other officer shall, on demand, pay the balance to the defendant in execution.

Section 960. Reversal of Judgment After Sale of Interest in Land

If any judgment or judgments, in satisfaction of which any on-trust interests lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

Section 961. Execution on judgment in Favor of Tribe

In all civil actions wherein the Tribe as plaintiff, has heretofore or may hereafter recover judgment, and where in any such action an execution has or may be issued, the Tribe through the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action and such additional amount as may be approved by the Tribal Legislative Body said amount to be credited upon the judgment.

And further, when such property offered for the sale at execution is brought by the Tribe, said property may be sold for the Tribe by the officer or officers upon whose relation the Tribe was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the Tribe may bid for the Tribe, not to exceed the amount of the judgment and such additional amount as may be approved by the Tribal Legislative Body provided however, that said bid is not more than one hundred dollars (\$100.00) higher than the next best bid, and if there be no other bidder, then not to exceed one hundred dollars (\$100.00).

And further provided that in disposing of such property so acquired, if it be personal property the officer or successor of the officer upon whose relation the Tribe was plaintiff may sell said property be executing a good and sufficient Bill of Sale, to be attested by the Secretary of the Tribe. And in disposing of any non-trust interest in real property so acquired or any interest or equity therein, the officer or successor in office on whose relation the Tribe

was party plaintiff may execute in the name of the Tribe by said officer a good and sufficient deed, to be attested by the Secretary of the Tribe. Provided, however, that in no event shall any sale be valid under this Act for any amount less than the amount for which said property was originally bid in by the Tribe. The duns obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained, or if none, then in the Tribal land purchases fund for the purchase of other real property to the Tribe.

Section 962. Reappraisal Where Realty Twice Advertised for Sale

In all cases where a non-trust interest in real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the Court, on motion of the plaintiff, to set aside such appraisal and order a new one to be made, or to set aside such levy and appraisal and aware a new execution to issue, as the case may require.

Section 963. Return of Execution

The Chief of the Tribal Police or other officer to whom any writ of execution shall be directed, shall return such writ to the Court to which the same is returnable, within ninety days from the date thereof.

Section 964. Principal and Surety

In all cases where judgment is rendered in the Tribal Court upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the Court, by parole or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their co-defendant, it shall be the duty of the clerk of said Court, in recording the judgment thereon to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the Court aforesaid shall issue execution on such judgment, commanding the

Chief of the Tribal Police or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor; but for want of sufficient property of the principal debtor to make the same that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Section 965. Hearing on Assets

In addition to other discovery procedures, the Court, at any time after judgment upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his property subject to execution to satisfy the judgment. The order to appear shall be served on the judgment debtor as a summons is served and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records, documents, or papers relating to the judgment creditors property. Such order may be enforced by contempt proceedings.

SUBCHAPTER C

CONTRIBUTION

Section 971. joint Debtors or Sureties

When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may regardless of the nature of the demand upon which the judgment was rendered, compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal; in such case, the person so paying or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten days after his payment he file with the

Clerk of Court notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk shall make an entry thereof in the margin of the docket.

Section 972. Joint Tort-Feasors — Contribution — Indemnity — Exemptions — Release, Covenant Not to Sue, Etc.

(a) When two or more persons become jointly or severally liable in tort for the same injury to person or property for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this section.

(b) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tort-feasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which in excess of what was reasonable.

(e) A liability insurer which by payment has discharged, in full or in part, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This act does not impair any right of indemnity under existing law. When on tort-feasor is entitled to indemnity from

another, right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(g) This subchapter shall not apply to breaches of trust or of other fiduciary obligation.

(h) When a release, covenant not to sue or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against others to be extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

SUBCHAPTER D

COSTS

Section 981. Affidavit in Forma Pauperis

Any person who cannot afford to pay costs of an action in order to vindicate his rights may be allowed by the Court to proceed without paying costs upon the filing of an affidavit in forma pauperis. The affidavit in forma pauperis shall be in the following, and attached to the petition, viz.:

[Name of Tribe, Name of Reservation] in the District Court of [Name of Tribe]: I do solemnly swear that the cause of acting set forth in the petition hereto prefixed is just, and I (or we) do further swear that by reason of my (or our) poverty, I am unable to give security for costs.

Section 982. False Swearing in Such Case

Any person willfully swearing falsely in making the affidavit aforesaid, shall, on conviction, be adjudged guilty of perjury, and punished as the law prescribes.

Section 983. Costs Where Defendant Disclaims

Where defendants disclaim having any title or interest in land or other property, the subject matter of action, they shall recover their costs, unless for special reasons the Court decide otherwise.

Section 984. Certain Costs Taxed at Discretion of Court

Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the Court, in its discretion, may direct.

Section 985. Costs to Successful Party as Matter of Course

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the party, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific, real or personal property.

Section 986. Costs in Other Cases

In other actions, the Court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Section 987. Several Actions on joint Instrument

Where several actions are brought on one bill of exchange, promissory note or other obligation, or instrument in writing, against several parties who might have been joined as defendants in the

same action, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the Tribal jurisdiction or otherwise subject to suit and service of process in the Tribal District Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence.

Section 988. Clerk to Tax Costs

The Clerks of the District Court shall tax the costs in each case, and insert the same in their respective judgments, subject to re-taxation by the Court, on motion of any person interested.

Section 989. Cost of Notice or Other Legal Publication

Whenever any notice, or other legal publication is required by law to be made in any action or proceeding pending in the Court, the costs of such publication shall be taxes or other costs in said action or proceeding.

Section 990. Attorney Fees Taxable as Costs

(a) In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxes and collected as costs.

(b) In any civil action to enforce payment of or to collect upon a check, draft or similar bill of exchange drawn on a bank or - otherwise, payment upon which said instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee, such fee to be assessed by the Court as costs against the losing party; provided, that said fee shall not be allowed unless the plaintiff offers

proof during the trial of said action that prior to the filing of the petition in the action demand for payment of the check, draft or similar bill of exchange had been made upon the defendant by registered or certified mail not less than ten (10) days prior to the filing of such suit.

(c) In any civil action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation, or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxes and collected as costs.

(d) In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, which shall be taxes and collected as costs.

(e) In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, Court costs and interest to be set by the Court and to be taxes and collected as other costs of the action, except that a plaintiff who is required to pay costs pursuant to Section 903 of this Act may not recover his attorney's fees as provided by this subsection.

Section 991. Costs Defined

Costs include, in addition to items of expense specifically recoverable as costs pursuant to any statute of the Tribe, fees required to be paid by law for the filing of .any paper in an action expense for service of process as provided by law, costs of transcripts, Tribal Police Fees for service of papers and mileage, costs of publication of any notice required to be published, printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by Court rule.

Section 992. Authority of Court to Fix Cost Rates

The Court by rule may set the fees and costs of any service performed by the Court Clerk or Tribal Police Chief on behalf of the parties when such fees and costs are not provided for by Tribal statute. Such fees and costs shall be maintained at the minimum level possible considering the needs of the Court Fund.

CHAPTER TEN

LIMITATION OF ACTIONS

Section 1001. Limitations Applicable

Civil actions can only be commenced within the periods prescribed in this Chapter after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation. There shall be no statute of limitations applicable against civil actions brought by the Tribe on its own behalf except to the extent that a statute of limitation is expressly stated to be applicable to the Tribe by this Code or some Tribal statute.

Section 1002. Limitation of Real Actions

Actions for the recovery of real property or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the claim shall have accrued, and at no other time thereafter.

(a) An action for the recovery of non-trust interest in real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of the Court, in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the Court in an administration or probate proceedings; provided, however, that

where any such action pertains to real estate distributed under decree of the Court in administration or probate proceedings and would at the passage of this act be barred by the terms hereof, such action may be brought within five (5) years after the passage of this Act.

(b) An action for the recovery of real property sold by executors, administrators, or guardians, upon an order or judgment of a Court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of recording of the deed made in pursuance of the sale.

(c) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed.

(d) An action for the recovery of real property not herein before provided for, within twenty (20) years.

(e) An action for the forcible entry and detention or forcible detention only if real property, within three (3) years.

(f) Paragraphs a, b, and c shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of five (5) years from and after its effective date.

(g) Nothing in this Section should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian Tribe under any law of the United States or restricted against alienation by any law of the United States in conformity to the laws of the United States relating to such Peal property.

Section 1003. Persons Under Disability - In Real Property Actions

Any person entitled to bring an action for the recovery of real property, who may be under legal disability when the cause of action accrues, may bring his action within two years after the disability is removed.

Section 1004. Limitation of Other Actions

Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

(a) Within seven (7) years: An action upon any contract, agreement or promise in writing.

(b) Within five (5) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.

(c) Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud — the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

(d) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

(e) An action upon the official bond or undertaking of an executor, administrator, guardian, Tribal Police officer, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.

(f) An action for relief, not herein before provided for, can only be brought within five (5) years after the cause of action shall have accrued.

Section 1005. Persons Under Disability in Actions Other Than Real Property Action

If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed.

Section 1006. Absence or Flight of Defendant

When a cause of action accrues against a person and that person is out of the Tribal jurisdiction or has concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the Tribal jurisdiction, or while he is concealed. If, after a cause of action accrues against a person and that person leaves the Tribal jurisdiction or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of the Court over a person or corporation based upon service outside the Tribal jurisdiction, state, or nation, or based upon service by publication permits the Court of this Tribe to acquire personal jurisdiction over the person, the period of his absence or concealment shall be computed as part of the period within which the action must be brought.

Section 1007. Limitation of New Action After Failure

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within two years after the reversal or failure

although the time limit for commencing the action shall have expired before the new action is filed. An appeal of any judgment or order against the plaintiff other than on the merits as above stated shall toll the two year period during the pendency of the appeal.

Section 1008. Extension of Limitation

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

Section 1009. Statutory Bar Absolute

When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim, setoff, or cross-claim.

Section 1010. Law Governing Foreign Claims

The period of limitation applicable to a claim accruing outside of the Tribal jurisdiction shall be that prescribed either by the law of the place where the claim accrued or by the law of this Tribe whichever last bars the claim.

Section 1011. Limitation of Building Construction Tort Claims

No action in tort to recover damages

(a) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

(b) For injury to property, real or personal, arising out of any such deficiency, or

(c) For injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction of such an improvement more than ten (10) years after substantial completion of such an improvement.

CHAPTER ELEVEN

FAMILY RELATIONS

Section 1101. Recording of Marriage and Divorces

All marriages and divorces to which an Indian person in a party, whether consummated in accordance with the State law or in accordance with Tribal law or custom, shall be recorded in writing executed by both parties thereto within three (3) months at the office of the Clerk of the Tribal District Court in the marriage record and a copy thereof delivered to the Bureau of Indian Affairs agency of the jurisdiction in which either or both of the parties reside for the agency records.

Section 1102. Tribal Custom Marriage and Divorce

(a) Indians who desire to become married or divorced by the custom and common law of the Tribe shall contain' to the custom and common law of the Tribe. Indians who assume or claim a divorce by Tribal common law and custom shall not be entitled to remarry until they have complied with the Tribal common law and remain separated for six months as in the case of statutory divorces, nor until they have recorded such divorce at the office of the Clerk of the Tribal District Court with a copy delivered to the Bureau of Indian Affairs Agency for agency records.

(b) The validity of Indian custom marriage and divorce shall continue to be recognized as heretofore.

(c) In any case wherein the marital status of an Indian person is at issue, the Court shall have full authority to determine the marital status of the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment thereon.

Section 1103. Tribal Custom Adoption

Tribal Custom Adoptions shall continue to be recognized and shall be fully recognized by the Court, without the necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, the obligation to support children, and other family matters. However, Tribal common law adoptions shall not be recognized for the purpose of probate of descendant's estates unless, prior to the death of the descendant, the common law adoption was formalized by action of the Tribal Court, or in the case of adults, by a writing acknowledging such adoption filed in the Tribal Court. A Tribal Common law adoption as a child of another does not terminate parental rights of the parents, nor deprive the natural parents of their ultimate right to the custody of child who is adopted by another pursuant to the Tribal common law.

Section 1104. Determination of Paternity and Support

The Tribal District Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal District Court.

Section 1105. Determination of Heirs

(a) When any member of the Tribe dies within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent and may bring a suit in the Tribal District Court to determine the heirs of the decedent and to divide among the heirs such property of the decedent. NO determination of heirs shall be made unless all the possible heirs known to the Court, to the superintendent of the Indian Agency, and to the claimant have been notified of the suit as in service of summons and given full opportunity to come before the Court and

defend their interests. Possible heirs who are not residents of the Tribal jurisdiction may be notified by certified mail, return receipt requested, and if said notice is returned refused or otherwise unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating to the recipient that the action will proceed ten days after mailing of the second notice. A copy of every such notice must be preserved in the record of the case.

(b) In the determination of heirs the Tribal District Court shall apply the written laws of the Tribe or the custom of the Tribe as to inheritance if such custom is proved and no written law exists. Otherwise, the Court shall apply State law in deciding what relatives of the decedent are entitled to be his heirs.

(c) Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Tribal District Court may distribute only such property as does not come under the jurisdiction of the administrative law judge.

SUBCHAPTER A

STATUTORY DIVORCE

Section 1111. Grounds for Divorce

The District Court may grant a divorce for any of the following causes:

- (a) Abandonment for one (1) year.
- (b) Adultery.
- (c) Impotency.

(d) When the wife at the time of her marriage, was pregnant by another than her husband.

- (e) Extreme cruelty.
- (f) Fraudulent contract.
- (g) Incompatibility.
- (h) Habitual drunkenness.
- (i) Gross neglect of duty.
- (j) Imprisonment of the other party in a State or Federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.
- (k) Insanity for a period of five years. The fact and duration of insanity being proved by the testimony of two physicians. Such divorce does not relieve the sane spouse from the obligation and support and shall not be granted unless a guardian has been appointed.

Section 1112. Residence of Plaintiff or defendant

Either the plaintiff or the defendant in an action for divorce must have been an actual resident, in good faith, of the Tribal jurisdiction for three (3) months next preceding the filing of the petition, or a member of the Tribe.

Section 1113. Personal jurisdiction

The Court may exercise personal jurisdiction over a person, whether or not a resident of the Tribal jurisdiction who lived within the Tribal jurisdiction in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in the Tribal jurisdiction. When the person who is subject to the jurisdiction of the Court has departed from the Tribal jurisdiction he may be served outside of the Tribal jurisdiction by any method that is authorized by the statutes of the Tribe. In all other cases, the Court may grant a

divorce but may not enter a personal judgment for alimony or child support.

Section 1114. Custody of Children, Disposition of Property

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce. If a divorce is granted it shall be granted to both parties. In any such case or where the Court grants alimony without a divorce or in any case where a divorce is refused, the Court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or if either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties. In making a property settlement, the Court shall have due regard for the needs of the family and justice to the parties.

Section 1115. Orders Concerning Property, Children, Support and Expenses

After a petition has been filed in an action for divorce and alimony, or for alimony alone, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or

their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

Section 1116. Care and Custody of Children

A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are such children, the Court shall make provision for guardianship, custody, support and education of the minor children, and may modify or change any order in this respect, whenever circumstances render such change proper either before or after final judgment in the action.

Any child, not emancipated and declared an adult by Court order, shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If the Court determines that the parents are unable to provide for the support of the children, it may order any person obligated to support the children by the Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to the support of the children within their means.

Section 1117. Preference of Child

In any divorce action in which the Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and if the Court so finds then the Court may consider the expression of preference by the child in determining custody. Provided, however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody.

Section 1118. Paternity Determination

In an action for a divorce, legal separation or annulment where there are children born to the parties, the Court may determine if the parties to the action are the parents of the children, although the Court finds that the parties are not married; and if the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, and it may award child support to the parent to whom it awards custody, and make an appropriate order for payment of costs and attorney's fees.

Section 1119. Interest of Delinquent Payment

When ordered by the Court, court-ordered child support payments and court-ordered payments of suit monies shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

Section 1120. Restoration of Wife's Maiden Name

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

Section 1121. Disposition of Property

The Court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the Court shall make such division of

the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof having due regard to the needs of the family. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

Section 1122. Effect of Divorce

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

Section 1123. Remarriage and Cohabitation

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of the decree of divorce or to cohabit with such other person during said period and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this section by such marriage shall be deemed guilty of bigamy. Any person violating the provisions of this section by such cohabitation shall be deemed guilty of adultery.

An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

Section 1124. Punishment for Certain Remarriage and Cohabitation

Every person convicted of bigamy as such offense is defined in the foregoing section shall be punished by imprisonment in the Tribal jail for a term of not more than six months.

Section 1125. Remarriage Within Six Months

A marriage wherein one of the parties had not been divorced for six months shall hereafter be ground for annulment of marriage by either party.

Section 1126. Time When Judgment Final

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

Section 1127. Avoidance of Marriage of Incompetents

When either of the parties to a marriage shall be incapable, from want of age or understanding, or contracting such marriage, the same may be declared void by the District Court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

Section 1128. Alimony Without Divorce

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the District Court, for any of the causes for which a divorce may be granted. Either may make the same defense to such as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

Section 1129. Evidence

No divorce shall be granted without proof taken upon the record as in other cases.

Section 1130. Setting Aside of Divorce Decrees

When a decree of divorce has been issued by the District Court, said Court is hereby authorized to dissolve said decree at any future time, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the Court that neither one has married a third party during the time since the issuance of the decree of divorce.

Section 1131. Termination of Money Payments

(a) In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, what dollar amount of all or a portion of each such payment is designated as support, and what dollar amount of all or a portion of such payment is a payment pertaining to a division of property. Upon the death of the recipient, the payments for support, if not already accrued, shall terminate, but the payments pertaining to a division of property shall continue until completed; and the decree shall so specify. The payments pertaining to a division of property shall be irrevocable. Upon the presentation of proper

judgment for the payment of support to be terminated, and the lien thereof released unless a proper claim shall be made for any amount of past due support payments by any executor, administrator or her within ninety (90) days from the date of death of the recipient. The Court shall also provide in the divorce in the divorce decree that any such payment of support shall terminate after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable. Provided however, that unless the recipient shall commence an action for such determination within ninety (90) days of the date of such remarriage, the Court shall, upon proper application, order the payment of support terminated and the lien thereof discharged.

(b) An order for continuing the payments of support shall not be a lien against the real property of the person ordered to make such payments unless the Court order specifically provides for a lien on real property or an arrearage in such payments of support has been reduced to a judgment.

(c) The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate support payments upon proof of substantial change of circumstances relating to need for support or ability to support. As used herein, cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common law marriage. The petitioner shall make application for modification and shall follow notification procedures as used in other divorce decree modification actions.

Section 1132. Mailing of Alimony and, Support Payments

If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the Court Clerk, then it shall

be the duty of the Court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee it shall be the duty of the payee to furnish to the Court Clerk in writing the new address of the payee.

Section 1133. Modification of Decree

Notwithstanding that a decree of divorce has become final, the Court may modify its judgment relative to child support or alimony at any time in the interest of justice and equity, have due regard for the needs of the family or families of the parties, upon motion for modification filed in the original action and served with summons requiring an answer to said motion within twenty (20) days. Such motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion for modification shall be a final appealable order.

Section 1134. Effect on Common Law Divorce

This subchapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for use by those who prefer the statutory method of divorce or who cannot agree as to child custody and support, spousal support, property division, or other similar matters upon which agreement is necessary to effectuate a Tribal common law divorce.

CHAPTER TWELVE
FORCIBLE ENTRY AND DETAINER

Section 1201. Forcible Entry and Detainer

The District Court shall have jurisdiction to try all actions for the forcible entry and detainer, or detainer only, or real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this act shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

Section 1202. Powers of Court

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

Section 1203. Extent of Jurisdiction

Proceedings under this Chapter may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales-by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the Court, and the same

adjudged valid: and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.

Section 1204. Issuance and Return of Summons

The summons shall be issued and returned as in other cases, except that it shall command the Chief of the Tribal Police or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

Section 1205. Service of Summons

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three (3) days before the date of trial.

Section 1206. Constructive Service of Summons

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by registered mail, service may be obtained for the sole

purpose of adjudicating the right to restitution of the premises by the Tribal Police's posting said summons conspicuously on the building on the premises, and, if there by no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten (10) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last-known address by registered or certified mail at least seven (7) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process.

Section 1207. Answer or Affidavit by Defendant

(a) In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

(b) In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

(c) No answer by the defendant shall be required before the time for trial of the cause.

Section 1208. Trial by Court

All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand (10,000) dollars.

Section 1209. Procedure Where No Jury Available

If a jury be properly demanded by either party, and no jury is available from the general panel, the judge shall immediately direct that an open venire be issued to the Chief of the Tribal Police or one of his deputies, for such number of jurors as may be deemed necessary, to be selected without resorting to the jury wheel. The persons selected shall have the qualifications of jurors.

Section 1210. Attorney Fee

A reasonable attorney fee shall be allowed by the Court to the prevailing party.

Section 1211. Writ of Execution - Form - New Trial

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The [Tribe] to the Chief of the Tribal Police:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following _____ described _____ premises, _____ to _____ wit: _____ tried before me, wherein, _____ was plaintiff, and _____ was defendant, judgment was rendered on the _____ day of _____, 19____, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the cost aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this ____ day of _____, 19____.

A. B. Judge

A motion for new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

Section 1212. Stay of Execution

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section and shall make levy to collect the amount of the judgment and all accruing costs. The officer's return shall be as upon other executions.

The defendant shall have three (3) days after the date of judgment to post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to stop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

Section 1213. Forcible Entry and Detainer Action on Small Claims Docket

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone and when joined with a claim for recovery of rent, damages to the premises, where the total recovery sought, exclusive of attorney's

fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the District Court. The Court Clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons and generally assist the unrepresented plaintiffs to the same extent that he is now required so to do under the Small Claims Procedure Act.

Section 1214. Affidavit Form

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the Clerk of the Court:

AFFIDAVIT

Plaintiff's name, being duly sworn, deposes and says:

The plaintiff resides at (place of residence), and defendant's mailing address is (defendant's address).

The defendant is indebted to the plaintiff in the sum of \$(amount) for rent and for the further sum of \$(amount) for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid,

and/or

The defendant is wrongfully in possession of certain real property within the Tribal jurisdiction described as (address or legal description of property); the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

plaintiff's name

Subscribed and sworn to before me this _____ day of _____,
19 ____.

Notary Public (Clerk or
Judge)

Section 1215. Summons - Form

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

The [Name] Tribe to the within named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at name or address of building, in City, Pawnee Tribe, at the hour of _____ o'clock of ____ day of month, 19____, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summon is issued.) You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Tribal Police to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this ____ day of _____, 19____.

Court Clerk or Judge

CHAPTER THIRTEEN HABEAS CORPUS

Section 1301. Persons Who May Prosecute Writ

Every person restrained of his liberty, under any pretense whatever, may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when the restraint is illegal.

Section 1302. Application for Writ

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(a) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.

(b) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

(c) If the restraint be alleged to be illegal, in what the illegality consists.

Section 1303. Writ Granted

Writs of habeas corpus may be granted by any judge or magistrate of the Tribal District Court, either in open Court, or in vacation; and upon application the writ shall be granted without delay.

Section 1304. Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the Court, or judge, at such time and place as the Court or judge shall direct, to show cause if any he has for the restraint imposed upon the person on whose behalf the writ is issued, to do and receive what shall be ordered concerning him and have then and there the writ in this possession.

Section 1305. Delivery to Tribal Police Chief

If the writ be directed to the Chief of the Tribal Police, it shall be delivered by the Clerk to him without delay.

Section 1306. Service on Party Other Than Tribal Police Chief

If the writ be directed to any other person, it shall be delivered to the Chief of the Tribal Police and shall be by him served by delivering to the writing such person without delay.

Section 1307. Service When Person Not Found

If the person to whom such writ is directed cannot be found, or shall refuse admittance to the Chief of the Tribal Police, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.

Section 1308. Return and Enforcement of Writ

The Chief of the Tribal Police or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein,

and no sufficient excuse be shown for such neglect or refusal, the Court shall enforce obedience by attachment.

Section 1309. Manner of Return

The return must be signed and verified by the person making it, who shall state:

(a) The authority or cause of restraint of the party in his custody.

(b) If the authority be in writing, he shall return a copy and produce the original on the hearing.

(c) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

He shall produce the party on the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

Section 1310. Proceedings in Case of Sickness or Infirmity

The Court or judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

Section 1311. Hearings and Discharge

The Court or Judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restrain or for the continuance thereof, shall discharge the party.

Section 1312. Limits on Inquiry

No judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

(a) Upon process issued by any court or judge of the United States, or of any State or where such court or judge has exclusive jurisdiction; or,

(b) Upon any lawful process issued on any final judgment of a court of competent jurisdiction; or,

(c) For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

(d) Upon a warrant or commitment issued from the Tribal District Court, or any other court of competent jurisdiction, upon indictment or information.

Section 1313. Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

Section 1314. Writ May Issue to Admit to Bail

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

Section 1315. Notice to Interested Persons

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

Section 1316. Powers of Court

The Court or judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case.

Section 1317. Officers Not Liable for Obeying Orders

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon.

Section 1318. Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the Court or judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or judge may cause a Warrant of Attachment to be issued, reciting the facts, and directed to the Chief of the Tribal Police, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the Court or judge, to be dealt with according to law.

Section 1319. Arrest of Party Causing Restraint

The Court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person in charged with causing the illegal restraint.

Section 1320. Execution of Warrant of Attachment

The officer shall execute the Warrant of Attachment by bringing the person therein named before the Court or Judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

Section 1321. Temporary Orders

The Court or Judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, that justice may require. The custody of any part restrained may be changed from one person to another, by order of the Court or Judge.

Section 1322. Issuance and Service on Sunday

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.

Section 1323. Issue of Process

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process.

Amendments may be allowed, and temporary commitments, when necessary.

Section 1324. Protection of Infants and Insane Persons

Writ of habeas corpus will be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

Section 1325. Security for Costs Not Required

No deposit or security for costs shall be required of an applicant for a writ of habeas corpus.

CHAPTER FOURTEEN
MANDAMUSSection 1401. Functions of Mandamus

The writ of mandamus may be issued by the Supreme Court or the District Court, or any justice or judge thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal or officer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial or discretion.

Section 1402. Writ Not Issued Where Remedy at Law

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

Section 1403. Forms and Contents of Writs

The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed to show cause before the Court at a specified time and place, when he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

Section 1404. When Peremptory Writ of Issue

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

Section 1405. Petition Upon Affidavit

The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Section 1406. Allowance and Service of Writ

The allowance of the writ must be endorsed thereon, signed by the Judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglect to return the same, he shall be proceeded against as for contempt.

Section 1407. Answer

On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a complaint in a civil action.

Section 1408. Failure to Answer

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid

objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

Section 1409. Similarity to Civil Action

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action.

Section 1410. Recovery by Plaintiff

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory' mandamus shall also be granted to him without delay.

Section 1411. Damages Bar Further Actions

A recovery of damages, by virtue of this Chapter against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

Section 1412. Penalty for Refusal or Neglect to Perform

(a) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refuse or neglect to perform the duty so enjoined, the Court may impose a fine, not exceeding five hundred dollars, upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Tribal treasury.

(b) Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appear to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding five hundred (500.00) dollars upon such person and may commit him to the custody of the Tribal Police for a term of sixty (60) days or until he shall perform or agree to perform such duty or otherwise purge his contempt. The Court may, in an appropriate case, order the Chief of the Tribal Police to perform the act required which performance shall have the same effect as if performed by the person to whom the peremptory writ was issued.

CHAPTER FIFTEEN
QUO WARRANTOSection 1501. Quo Warranto — Relief Obtainable by Civil Action

The writ of quo warranto, and proceedings by infoination in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the Tribal election board, and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of prematurity as to time of commencement, which shall be deemed valid and timely, if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this Chapter shall not apply to any primary election.

Section 1502. Grounds for Action

Such action may be brought in the Supreme Court by its leave or in the District Court, in the following cases:

(a) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Tribal jurisdiction or any office in any corporation created by authority on this Tribe;

(b) Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

(c) When any association or number of persons shall act within the Tribal jurisdiction as a corporation without being legally incorporated or domesticated;

(d) When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law;

(e) For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

Section 1503. Persons Who May Bring Action

When the action is brought by the Tribal attorney general when directed to do so by competent authority, it shall be prosecuted in the name of the Tribe, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons. Whenever the action is brought against a person for usurping an office by the Tribal attorney general, he shall set forth in the petition the name of the person rightfully entitled to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

Section 1504. judgment is Contest for Office

in every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

Section 1505. Judgment for Plaintiff

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the office, after he has been qualified as required by law; and the Court shall order the defendant to deliver over all the books and papers in his custody

or within his power, belonging to the office from which he shall have been ousted.

Section 1506. Enforcement of Judgment

If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the Court, or judge thereof, shall enforce the order by attachment or imprisonment, or both.

Section 1507. Separate Action for Damages

When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one year after the judgment. The Court may give judgment of ouster against the defendant, and exclude him from the office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved.

Section 1508. Corporations

If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the Court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.

CHAPTER SIXTEEN

SMALL CLAIMS PROCEDURE

Section 1601. Small Claims

The following suits may be brought under the small claims procedure:

(a) Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other court costs, does not exceed Two Thousand Dollars (\$2,000.00). Libel or slander actions may not be brought in the small claims court.

(b) Actions to replevy personal property where the value of personal property sought to be replevied does not exceed Two Thousand Dollars (\$2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does exceed Two Thousand Dollars (\$2,000.00);

No action may be brought under small claims procedure by any collection agency, collection agent or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent (10%) of the judgment.

Section 1602. Small Claims Affidavit

Actions under the small claims procedure shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

IN THE DISTRICT COURT FOR
THE PAWNEE TRIBE SMALL
CLAIMS DIVISION

| | | |
|--------------------------|---|--------------|
| _____ |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | SC No. _____ |
| |) | |
| _____ |) | |
| Defendant |) | |
| Pawnee Tribe of Oklahoma |) | |
| |) | SS |
| Pawnee Tribal Reserve |) | |

_____, being duly sworn, deposes and says:

That the defendant resides at _____, (within) (without) the Tribal jurisdiction, and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of \$_____ for _____, which arose (within)(without) the Tribal jurisdiction that plaintiff has demanded payment of said sum, but the defendant refused to pay the same and no part of the amount sued has been paid.

and/or

That the defendant is wrongfully in possession of certain personal property described as _____ that the value of said personal property is \$_____. that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of said personal property, but that defendant wholly refused to do so.

plaintiff's name

Subscribed and sworn to before me on this _____ day of _____, 19____.

Notary Public, Clerk or Judge

My Commission Expires: _____

On the affidavit shall be printed:

TITLE

CIVIL PROCEDURE

ORDER

The people of [Name of Tribe], to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at _____, in _____, at the hour of _____ o'clock of the _____ day of _____, 19____, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of said claim as it is stated in said affidavit, for possession of the personal property described in said affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

Dated this _____ day of _____, 19____.

Court Clerk or Judge

Section 1603. Preparation of Affidavit

The claimant shall prepare such an affidavit as is set forth in Section 1602 of this Chapter or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.

Section 1604. Service of Affidavit

Unless service by the Tribal Police Chief or other authorized person is requested by the plaintiff, the defendant shall be served by - mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from

addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the Tribal Police Chief who shall serve the defendant in the time stated in Section 1605.

Section 1605. Date for Appearance

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

Section 1606. Transfer of Actions

On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action, and thereafter, the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be

answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case.

Section 1607. Counterclaim or Setoff

No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross-claim, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff or his attorney in person, and filed with the Clerk of the Court not later than forty-eight (48) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

CAPTION AND STYLE

Claim of Defendant

| | | |
|--------------------------|---|----|
| Pawnee Tribe of Oklahoma |) | |
| |) | SS |
| Pawnee Tribal Reserve |) | |

-----, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$_____ for, which amount defendant prays may be allowed as a claim against the plaintiff herein.

name

Subscribed and sworn to before me on this _____ day of _____, 19____.

Notary Public (or Clerk or Judge)

Section 1608. Actions for Amounts Exceeding in Excess of Two Thousand Dollars

If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Dollars (\$2,000.00), the action shall be transferred to the general civil docket of the District Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Two Thousand Dollars (\$2,000.00) may not be enforced for the part that exceeds Two Thousand Dollars (\$2,000.00) shall deposit with the Clerk of the Court cost that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

Section 1609. Attachment or Garnishment, Other Matters

No attachment or pre judgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

Section 1610. Trial by Court

Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wishes a reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the Clerk the sum of twenty dollars (\$20.00) against the costs or producing the record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall

be informal with the sole object of dispensing speedy justice between the parties.

Section 1611. Payment of judgment

If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the judge may make such order as to time of payment or otherwise as may, by him, be deemed to be right and just.

Section 1612. Appeals

Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the Tribe in the same manner as appeals are taken in other civil actions, provided that any party which did not request a reporter and provided in Section 1610 shall not be granted a new trial or other relief on appeal due to lack of a record.

Section 1613. Fees

A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit as determined by rules of the Court, and, if the affidavit and order are served by the Tribal Police, the Clerk shall collect the usual police service fee, which shall be taxes as costs in the case. After judgment, the clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the District Court. Provided that any statute providing for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

Section 1614. Costs

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

Section 1615. Judgments Rendered Under Small Claims Procedure

(a) Except as otherwise provided herein, judgments rendered under the Small Claims Procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.

(b) Any small claims judgment, when satisfied by payment other than through the office of the Court Clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court Clerk to the judgment creditor at his last-known address at least ten (10) days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.

(c) Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Tribal jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court Clerk for entry in the clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court Clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and the Court Clerk shall provide the proper certified copy of the judgment necessary to file.

Section 1616. Fee for Docketing judgments

The Court Clerk shall, upon payment by the prevailing part of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this section shall become part of the cost of the action.

Section 1617. Other Actions In Small Claims Court

Be leave of the Court, and with the consent of all parties, other actions not provided for herein, or exceeding the maximum amount allowed to be claimed by Sections 1601 and 1608, except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.

PAWNEE TRIBE OF OKLAHOMA
Law and Order Code

TITLE IV

EVIDENCE

Prepared By:
Marvin E. Stepson
Attorney at Law
Fairfax, Oklahoma

October 1, 1993

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CHAPTER ONE

GENERAL PROVISIONS

Section 101. Scope

This Act governs evidentiary questions in all proceedings in the Courts of the Pawnee Tribe, whether civil, criminal, juvenile, or otherwise except as may be otherwise specifically provided by Tribal law.

Section 102. Purpose and Construction

This Act shall be constructed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Section 103. Rulings on Evidence

(a) Effect of erroneous ruling. Error may not be predicated, nor a judgment reversed or modified, upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(1) Objections. In case the ruling is one admitting evidence, a timely objection or motion to strike appears to record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof, or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The Court may add any other or further statement which shows the character of the

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evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Questions on evidentiary matters known to be in issue prior to trial may be determined by a hearing prior to trial, and the matter does not have to be raised at the trial by the party whose evidence is ruled inadmissible in order to preserve the error so long as the error is apparent from the transcript of the hearing. Questions which arise concerning the admissibility of evidence during the trial may be resolved in open Court, if practicable, at a hearing at the bench out of the hearing of the jury, if practicable, or a recess may be taken and a hearing held upon the admissibility of the evidence at issue.

(d) Plain error. Nothing in this Section precludes taking notice of plain error affecting substantial rights although they were not brought to the attention of the court.

Section 104. Preliminary Questions

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by this Act except those with respect to privileges.

(b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or may admit subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury. Hearings on the admissibility of confessions in a criminal case shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused in a criminal case is a witness, if he so requests.

(d) Testimony by accused. The accused in a criminal case does not, by testifying upon a preliminary matter, or other matter which would be heard outside the hearing of the jury, if any, subject himself to cross-examination as to other issues in the case. The accused in a criminal case waives his right against self-incrimination as to all issues in the case by testifying upon any fact pertaining to any element of the charge against him during the actual trial of the case before the jury or other finder of fact.

(e) Weight and credibility. This Section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Section 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Section 106. Remainder or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

CHAPTER TWO

JUDICIAL NOTICE

Section 201. Judicial Notice of Adjudicative Facts

(a) Scope of Chapter. This Chapter governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either

(1) generally known within the territorial jurisdiction of the Court, or,

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. The Courts may take judicial notice, whether requested or not.

(d) When mandatory. The Courts shall take judicial notice if requested by a party and supplied with the necessary information, or when required to do so by Tribal law.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any state of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

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CHAPTER THREE

PRESUMPTIONS

Section 301. Presumptions in General in Civil Actions and Proceedings

In all civil and criminal actions and proceedings, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift the risk of non-persuasion, which remains upon the party on whom it was originally cast.

CHAPTER FOUR

RELEVANCY AND ITS LIMITS

Section 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Section 402. Relevant Evidence Generally Admissible
Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the Tribe, by Act or Ordinance of the Legislative Authority of the Tribe, by this Act, or by other rules prescribed by the Supreme Court of the Tribe pursuant to statutory authority. Evidence which is not relevant is not admissible.

Section 403. Exclusion of Relevant Evidence on Grounds of
Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence, or if it is inadmissible pursuant to some Section of this Act.

Section 404. Character Evidence Not Admissible to Prove Conduct;
Exceptions; Other Crimes

- (a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except;

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in Sections 607, 608, and 609 of this Act.

(4) Other crimes, wrongs, or act. Evidence of other crimes, wrongs, or acts is not admissible to move to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Section 405. Methods of Proving Character

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Section 406. Habit: Routine Practice

Evidence of the habit of an person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eye witnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Section 407. Subsequent Remedial Measures

When after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event, in order to encourage additional safety measures to be taken for the protection of the public whether or not the previous measures were sufficient to prevent a finding of negligent or culpable conduct. This Section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measure, if controverted, or impeachment.

Section 408. Compromise and Offers to Compromise

In order to encourage the non-judicial settlement of disputes, evidence of:

- (a) furnishing or offering or promising to furnish, or
- (b) accepting or offering or promising to accept,

a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not-admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This Section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Section also does not require

exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Section 409. Payment of Medical and Similar Expenses

In order to encourage non-judicial settlement of disputes and to encourage persons to assist one another for their joint benefit, evidence of furnishing or offering or promising to pay, or the payment of medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Evidence of payment of such charges may be introduced by the person making such payment for the purpose of reducing a judgment for damages.

Section 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

(a) Except as otherwise provided in this Section, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(b) A plea of guilty which has not been withdrawn, and statements made in connection therewith are admissible if-relevant in any criminal or civil proceeding.

Section 411. Liability Insurance

(a) Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This Section does not require the exclusion of evidence or insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(b) In the sound discretion of the Tribal District Court, and subject to any exclusionary rule promulgated by Supreme Court of the Tribe, evidence that a person was or was not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury or judge trial sounding in tort, or otherwise, in the second phase of the trial upon the issue of the amount of actual and consequential damages to be awarded, after liability has been determined in the first phase of the trial, as provided in the Civil Procedure Act.

CHAPTER FIVE

PRIVILEGES

Section 501. Privileges Recognized Only as Provided

Except as otherwise provided by the Tribal Constitution or Tribal Statute, including this Act, or rules promulgated by the Supreme Court of the Tribe pursuant to legislative authority, or as may be required by federal law, no person has a privilege to:

- (a) refuse to be a witness;
- (b) refuse to disclose any matter;
- (c) refuse to produce any object or writing; or
- (d) prevent another from being a witness or disclosing any matter or producing any object or writing.

Section 502. Lawyer.-.Client Privilege

- (a) Definitions. As used in this Section:

(1) A "Client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.

(2) A representative of the client is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law by any Indian tribe, or state, or nation.

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(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third person other than those to whom disclosure is made in furtherance of the retention of professional legal services to the client or those reasonable necessary for the transmission of the communication, including close relatives who assist the client in obtaining legal counsel and whom the client requests to be present during discussions with the lawyer for the purpose of obtaining representation.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.

(1) between himself or his representative and his lawyer or his lawyer's representative,

(2) between his lawyer and the lawyer's representative,

(3) by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein,

(4) between representatives of the client or between the client and a representative of the client, or

(5) among lawyers and their representatives representing the same client.

(c)- Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator or close relative who assists in obtaining legal representation, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, other organization, whether or not in existence. The person who was the

lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege on behalf of the client.

(d) Exceptions. There is no privilege under this Section:

(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonable should have known to be a crime or fraud;

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by intervivos transaction;

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) Document attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) Joint clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients or;

(6) Public officer or agency. As to a communication between a public officer or agency and its lawyers unless the communication concerns a pending or contemplated investigation, claim, or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest. Communications of the Tribal Attorney to the Tribe are not within this exception unless such communications have been

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released for public information by the appropriate Tribal officials.

Section 503. Privilege

Physician and Psychotherapist-Patient

(a) Definitions. As used in this Section:

(1) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A "physician" is a person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the patient so to be.

(3) A "psychotherapist" is:

(i) a person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

(ii) a person licensed or certified as a psychologist under the laws of any Indian tribe, or state, or nation, while similarly engaged.

(4) A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including

alcohol or drug addiction, among himself, his physical or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who may claim the privilege. The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication, and any other persons directly involved in treatment sessions, are presumed to have authority to claim the privilege but only on behalf of the patient.

(d) Exceptions.

(1) Proceeding for hospitalization. There is no privilege under this Section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) Examination by order of court. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this Section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an element of claim or defense. There is no privilege under this Section as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

Section 504. Husband and Wife Privilege

(a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) General rule of privilege. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.

(c) Exceptions. There is no privilege under this Section in a proceeding for legal separation or divorce between the parties when the communication is relevant to the issues in the action for separate maintenance or divorce, or in which one spouse is charged with a crime against the person or property of:

- (1) the other,
- (2) a child of either,
- (3) a person residing in the household of either, or
- (4) a third person committed in the course of committing a crime against any of them.

Except in an action brought by the Tribe to protect a child subject to abuse, neglect, or other cause which is sufficient to maintain a juvenile court action, testimony received pursuant to this exception in an action for divorce or legal separation between the husband and wife may not be used or referred to in any other proceeding between either the husband or wife and third persons.

Section 505. Religious Privilege

(a) Definitions. As used in this Section:

- (1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, Native American Church Roadman, properly authorized traditional band or society headman or firekeeper or other similar functionary of a

religious organization of a recognized active traditional Tribal religion, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present or to other persons to whom disclosure would be privileged under this Act if the disclosure had been made directly to such other person in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication, is presumed to have authority to claim the privilege but only on behalf of the communicant.

Section 506. Political Vote

(a) General rule of privilege. Every person has a privilege to refuse to disclose the tenor of his vote at any political election conducted by secret ballot.

(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the Tribe.

Section 507. Trade Secrets

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the

privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.

Section 508. Secrets of the Tribal Government and Other Official Information: Governmental Privileges

(a) If the law of the United States creates a governmental privilege that the courts of this Tribe must recognize under the Constitution and statutes of the United States, the privilege may be claimed as provided by the law of the United States.

(b) No other special governmental privilege is recognized except as created by the Constitution or statutes of the Tribe, including this Act.

(c) Privileges Recognized. The following governmental privileges are recognized:

(1) Elected members of the Tribal Legislature have a privilege against disclosure of their mental processes and reasoning in the casting of any vote by them at a duly constituted meeting of that body, except in cases where it is alleged that unlawful influence or bribery or attempted bribery was involved in that vote. This privilege may be claimed only by the member and is waived if the member testifies as to such matters.

(2) Justices, Judges, and Magistrates have a privilege against disclosure of their mental process and reasoning in the determination of any matter before them in any proceeding collateral to that matter, except in a collateral proceeding where it is alleged that unlawful influence or bribery or attempted bribery was involved in the underlying matter. The explanation and reasons for the decision of Judicial Officers which should appear on the record shall be sufficient. This Section shall not preclude the Supreme Court of the Tribe from remanding an action to a Judge or Magistrate for further findings of fact or conclusions of law in order to obtain an

adequate record for review or to determine all issues necessary to a decision in a case.

(3) Tribal Officers charged with the institution of legal proceedings before any agency of the Tribe or the Tribal Courts to enforce Tribal law have a privilege against disclosure of their mental processes and reasoning in the determination of any matter brought before them for a decision as to whether or not to institute such legal proceedings.

(d) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make, any further order the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the Government upon an issue as to which the evidence is relevant, or dismissing the action.

Section 509. Identify of Informer

(a) Rule of privilege. The Tribe, the United States, or a state, or subdivision thereof having police powers has a privilege to refuse to disclose the identify of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions:

(1) Voluntary disclosure; informer a witness. No privileges exists under this Section if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent or be adversely affected by the communication by a holder of the privilege or by the inforinier's own action, or if the informer appears as a witness for the government.

(2) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the courts finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply with a defense request for relevant information, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him, prohibiting the prosecuting attorney from introducing specific evidence, and dismissing charges. In civil cases, the court may make any order the interest of justice require. Evidence submitted to the court in camera shall be sealed and preserved to be made available to the Supreme Court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

Section 510. Waiver of Privilege by Voluntary Disclosure

A person upon whom this Chapter confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This Section does not apply if the disclosure itself is privileged.

Section 511. Privileged Matter Disclosed Under Compulsion or without Opportunity to Claim Privilege.

A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.

Section 512. Comment Upon and Inference From Claim of Privilege; Instruction

(a) Comment or inference not permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(b) Claiming privilege without knowledge of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

CHAPTER SIX

WITNESSES

Section 601. General Rules of Competency

Every person is competent to be a witness except as otherwise provided in this Act or other relevant Tribal law.

Section 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This Section is subject to the provisions of Section 703, relating to opinion testimony by expert witnesses.

Section 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Section 604. Interpreters.

An interpreter is subject to the provisions of the Act relating to qualification as a expert and the administration of an oath or affirmation that he will make a true translation.

section 605. Competency of judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Section 606. Competency of juror as Witness

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention, whether the jury determined the verdict, amount of damages, sentence or other matter relevant to a determination of the issues in the case by flipping a coin or other method determined purely by chance, or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Section 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling him.

Section 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness, and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attached by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Section 609, may not be proved by extrinsic evidence. Specific instances of conduct may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness

(1) concerning his character for truthfulness or untruthfulness, or

(2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) Special Rule for Criminal cases. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Section 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime

(1) was punishable by death or imprisonment in excess of one year under a federal or state law, under which he was convicted, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant (if it is the defendant in a criminal case whose credibility is being questioned), or

(2) involved dishonesty or false statement, regardless of the punishment or jurisdiction involved or

(3) was punishable by banishment or imprisonment for six months, or is otherwise classified as a serious offense under the laws of an Indian Tribe in whose Courts the conviction was obtained.

(b) Time limit. Evidence of a conviction under this Section is not admissible if a period of more than ten years has lapsed since the date of the conviction or of the release of the witness from the confinement or other punishment imposed for that conviction, whichever is the later date, unless the Court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence. Subject to subsection (c) of this Section and the discretion of the Court, such convictions are admissible if other admissible convictions not ten years old as calculated herein have occurred since the conviction in question.

(c) Effect of pardon, annulment, or certificate of rehabilitation.

Evidence of a conviction is not admissible under this Section if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which would be admissible under subparagraph (a) above, or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudication. Evidence of juvenile adjudication is generally not admissible under this Section. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness, other than the accused, if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence of the accused.

(e) Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible when evidence of the underlying convictions in the case has been introduced.

Section 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reasons of their nature his credibility is impaired or enhanced.

Section 611. Presentation

Mode and Order of Interrogation and

(a) Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth,

(2) avoid needless consumption of time, and

(3) protect witnesses from unnecessary harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions. A leading question is ordinarily a question which calls for a yes or no answer. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a child of young age, or other person who may have significant trouble understanding questions due to age, infirmity, lack of understanding of the English language, or other cause, a hostile witness, an adverse party; or a witness identified with an adverse party, interrogation may be by leading questions.

Section 612. Writing Used to Refresh Memory

(a) If a witness uses a writing to refresh his memory either while testifying or before testifying, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

(b) If it is claimed that the writing contains matters not related to the subject matter of the testimony the Court shall examine the writing in camera, exercise any portions not so related and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the Supreme Court in the event of an appeal. If a writing is not produced or delivered pursuant to order of the Court under this Section, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the Court may declare a mistrial.

Section 613. Prior Statements of Witnesses

(a) **Examining witness concerning prior statement.** In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statements of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded in opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Section 801(d)(2).

Section 614. Calling and Interrogation of Witnesses by Court

(a) Calling by Court. The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. Ordinarily, the Court should exercise its authority to call or question witnesses with great restraint in a jury trial.

Section 615. Exclusion of Witnesses

At the request of a party the Court shall order witness excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This request may be made by a party by requesting that the Court "invoke the rule" or words of similar import. This rule does not authorize exclusion of

- (1) a party who is a natural person, or
- (2) an officer or employee of a party, designated as its representative by its attorney, when the party is not a natural person, or

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(3) a person whose presence is shown by a party to be essential to the presentation of his cause.

CHAPTER SEVEN

OPINIONS AND EXPERT TESTIMONY

Section 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, his testimony in the form of opinion or inferences is limited to those opinions or inferences which are:

- (a) rationally based on the perception of the witness;
- (b) helpful to a clear understanding of his testimony or the determination of a fact in issue; and
- (c) upon a subject which it is presumed that the general public has sufficient knowledge to reach a reasonable opinion, conclusion, or inference.

Section 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Section 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Section 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Section 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Section 706. Court Appointed Experts

(a) Appointment. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless he consents to act. A witness so appointed shall be informed of his duties by the Court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the Court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed is payable from the Court fund, said fund to be reimbursed by the parties in such proportion and at such time as the Court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this Section limits the parties in calling expert of their own selection.

CHAPTER EIGHT

HEARSAY

Section 801. Definitions

The following definitions apply under this Chapter:

(a) Statement. A "Statement" is: (1)

an oral or written assertion or

(2) Non-verbal conduct of a person, if its is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. This Section generally includes affidavits and notarized statements unless made admissible by some one of these rules.

(d) Statements which are not hearsay. A statement is not hearsay if—

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(i) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or

(ii) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or

(iii) one of identification of a person or object made after perceiving him or it; or

(2) Admission by party-opponent. The statement is offered against a party and is:

(i) his own statement, in either his individual or a representative capacity or

(ii) a statement of which he has manifested his adoption or belief in its truth, or

(iii) a statement by a person authorized by him to make a statement concerning the subject, or

(iv) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or

(v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Section 802. Hearsay Rule

Hearsay is not admissible except as provided by this Act or by other rules prescribed by the Tribal Supreme Court pursuant to statutory authority or by Act or Ordinance of the Tribal Legislative Authority.

Section 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

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(b) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(c) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(e) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, concerning acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

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(g) Absence of entry in records kept in accordance with the provisions of Subsection (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of Subsection (f), to prove the non-occurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) Public records and reports. Records, reports, statements, or data compilations, in any form, of public officers or agencies, setting forth

(1) the activities of the office or agency, or

(2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or

(3) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) Records of vital statistics. Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship

by blood, marriage, or other similar acts of personal or family history, contained in a regularly kept record of a religious organization.

(1) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engraving on rings, inscriptions on family portraits, engraving on urns, crypts, or tombstones, or the like.

(n) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in documents affecting in interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(q) Market reports, commercial publications. Market quotations, tabulations, list, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

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(r) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or, established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) Reputation concerning personal or family history. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(t) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Tribe or community or State or nation in which located.

(u) Reputation as to character. Reputation of a person's character among this associates or in the community.

(v) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime or offense, to prove any fact essential to sustain the judgment in the criminal case as against persons in any civil case, but not against the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.

(w) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that

(1) the statement is offered as evidence of a material fact;

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(2) the statement is more probative on the point for which it is offered that any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Act and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Section 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the Court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), his attendance of testimony) by process or other reasonable means.

A declarant is not available as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history.

(i) statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history even though declarant

had not means of acquiring personal knowledge of the matter stated; or

(ii) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

(i) the statement is offered as evidence of a material fact;

(ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(iii) the general purposes of this Act and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Section 805. Hearsay within Hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Act.

Section 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Section 801(d)(2)(iii), (iv), or (v), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he be afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

CHAPTER NINE

AUTHENTICATION AND IDENTIFICATION

Section 901.
IdentificationRequirement of Authentication or

(a) General provisions. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not way of limitation, the following are examples of authentication or identification conforming with the requirements of this Section:

(1) Testimony of witness with knowledge.
Testimony that a matter is what it is claimed to be.

(2) Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness.
Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like.
Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstance connecting it with the alleged speaker.

(6) Telephone conversations. Telephone
conversations, by evidence that a call was made to the number

assigned at the time by the telephone company to a particular person or business, if:

(i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

(ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient document or data compilation. Evidence that a document or data compilation, in any form:

(i) is in such condition as to create no suspicion concerning its authenticity,

(ii) was in a place where it, if authentic, would be likely to be, and

(iii) has been in existence 20 years or more at the time it is offered:

(9) Methods provided by statute or rule. Any method of authentication or identification provided by Act or Ordinance of the Tribal Legislative Authority or by other rules prescribed by the Tribal Supreme Court pursuant to statutory authority.

Section 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any Indian Tribe, State, District, Commonwealth, territory, or insular possession thereof, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(i) of the executing or attesting person, or

(ii) of any foreign official whose certificate of genuineness of signature and official position related to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary or embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Subsection (1), (2), or (3) of this Section or complying with any Act or Ordinance of the Tribal Legislative Authority or rule prescribed by the Supreme Court of the Tribe pursuant to statutory authority.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodical. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions under Acts or Ordinances. Any signature, document, or other matter declared by Act or Ordinance of the Tribal Legislative Authority to be presumptively or prima facie genuine or authentic.

Section 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

CHAPTER TEN

CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS

Section 1001. Definitions

For the purpose of this article the following definitions are applicable:

(a) Writings and recordings. "Writings" and recordings" consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) Original. An "Original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "Original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "Original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Section 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in this Act or by Act or Ordinance of the Tribal Legislative Authority.

Section 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless:

- (a) a genuine question is raised as to the authenticity of the original or
- (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Section 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if—

- (a) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
- (b) Original not obtainable. No original can be obtained by any available judicial process or procedure; or
- (c) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or
- (d) Collateral matters. The writings, recording, or photograph is not closely related to a controlling issue.

Section 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form if otherwise admissible, may be proved by copy, certified as correct in accordance with Section 902 or testified to be correct by a witness who has compared it with the original. If

a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, the other evidence of the contents may be given.

Section 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in Court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The Court may order that they be produced in Court.

Section 1007. Testimony or Written Admission of Party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the non-production of the original.

Section 1008. Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under this Act depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of Section 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

CHAPTER ELEVEN

MISCELLANEOUS RULES

Section 1101. Applicability of Rules

(a) This Act applies to all criminal and civil controversies arising from any transaction or occurrence occurring on land which lies within the jurisdiction of the Tribe and to all other criminal or civil controversies which are subject to the lawful jurisdiction of the Courts of the Tribe.

(b) This Act applies generally to civil actions and proceedings, to criminal actions and proceedings and to contempt proceedings except those in which the Court may act summarily.

(c) The Chapter with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) This Act (other than with respect to privileges) does not apply in the following situations:

(1) When the Court must make preliminary findings of fact in order to rule on the admissibility of evidence under Section 104.

(2) Proceedings for extradition, preliminary examinations and arraignments in criminal cases, sentencing, granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants, the disposition phase of juvenile proceedings, and proceedings with respect to release on bail or otherwise.

Section 1102. Amendments

The Supreme Court shall have the power to prescribe amendments to this Act except with respect to any of these rules relating to privileges. Such amendments shall not take effect until they have been reported in writing to the Tribal Legislative Body of

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the Chief Justice and until the expiration of ninety days after they have been so reported; but if a majority of the participating Tribal Legislative Body within that time shall by formal affirmative written action disapprove any amendment so reported it shall not take effect. The effective date of any amendment so reported may be deferred by a majority of the Tribal Legislative Body to a later date or until approved by them. Any rule whether proposed or in force may be amended by an Act enacted by the Tribal Legislative Body. Any provision of law in force at the expiration of such time and in conflict with any such amendment not disapproved shall be of no further force or effect after such amendment has taken effect. Any proposed amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by Act of the Tribal Legislative Body. Upon becoming effective, all amendments made by the Tribal Supreme Court shall be incorporated into this ordinance and thereafter have the force and effect of a tribal Statute.

Section 1103. Title

This Act may be known and cited as the Rules of Evidence, or the Evidence Code of the Tribe.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE V

CRIMINAL PROCEDURE

Prepared By:
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Fairfax, Oklahoma

October 1, 1993

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Section 001. Scope, Purpose and Construction

(a) This Act governs the procedure in all criminal proceedings in the Tribal District Court and all preliminary or supplementary procedures as specified herein.

(b) Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.

(c) This Act is intended to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

(d) In any case wherein no particular procedure is provided herein, resort shall had to the Civil Procedure Act or other applicable tribal law subject always to the rights of the defendant. If no procedure is provided in either this Act, the Civil Procedure Act, or other Tribal law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.

CHAPTER ONE

PRELIMINARY PROVISIONS

Section 101. Prosecution of Offenses

(a) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this Act shall be deemed punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Tribe Plaintiff, against the person charged with an offense, referred to as the Defendant.

(c) The case number prefix assigned to criminal actions shall be sufficient different and unique from the prefix assigned to other types of cases to clearly distinguish them.

Section 102. Rights of Defendant

In all criminal proceedings, the defendant shall have the following rights:

(a) To appear and defend in person or by counsel except:

(1) Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the defendant upon a showing that the defendant received actual notice five (5) days prior to the proceeding, if no imprisonment is ordered, and any fine imposed does not exceed fifty dollars (\$50.00)

(2) The defendant may represent himself or be represented by an adult enrolled Tribal member with leave of the Court, if such representation is without charge to the defendant, or by any attorney or advocate admitted to practice before the Tribal Court, but no defendant shall the right to have appointed professional counsel provided at the Tribe's expense. However, the privilege to have counsel appointed may be granted by the Court or any Tribal law as may be provided in the rules of the Court relating to attorneys and lay advocates.

(b) To be informed of the nature of the charges against him and to have a written copy thereof;

(c) To testify in his own behalf, or to refuse to testify - regarding the charge-against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. He shall not, however, be deemed to have waived his

right to remain silent in other distinct phases of the criminal trial process.

(d) To confront and cross examine all witness against him, subject to the Evidence Code.

(e) To compel by subpoena the attendance of witnesses in his own behalf;

(f) To have a speedy public trial by an impartial judge or jury as provided in this Act;

(g) To appeal in all cases;

(h) To prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except;

(1) In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship;

(2) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

(i) Not to be twice put in jeopardy by the Tribe for the same offense.

Section 103. Limitation of Prosecution

(a) Every criminal proceeding except on offense for which banishment is a possible punishment shall be commenced within three (3) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred. Every criminal offense for ^J which banishment is a possible punishment shall be commenced within seven (7) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred.

(b) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.

(c) The date of "diligent discovery" is the date at which, in the exercise of reasonable diligence, some person other than the defendant and his conspiracy know or should have known that an offense had been committed.

(d) Time spent outside the jurisdiction of the Tribe for the purpose of avoiding prosecution shall not be counted toward the limitation period to begin prosecution.

Section 104. No Common Law Offenses

No act or failure to act shall be subject to criminal prosecution unless made an offense by some statute of the Tribe.

CHAPTER TWO

PROCEEDINGS BEFORE

TRIAL Section 201. The Complaint

(a) Complaint. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

(b) Contents of Complaint. The complaint shall contain:

(1) The name and address of the court:

(2) The name of the defendant; if known or some other name if not known plus whatever description of the defendant is known;

(3) The signature of the Tribal Attorney General or his Assistant; and his typewritten name.

(4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated.

(5) The person against whom or against whose property the offense was committed and the named of the witnesses of the Tribe if known, otherwise no statement need be made;

(6) The general name and Tribal code title and section number of the alleged offense.

(7) If the offense(s) is punishable by banishment, the Attorney General may state in the complaint or an amendment of the complaint that banishment will be recommended as a

punishment if the defendant is convicted. If such statement is not made banishment may not be imposed.

(c) Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(d) Time of filing complaint. A complaint may be filed at any time within the period prescribed by Section 103 of this Act, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

Section 202. Arrest Warrant or Summons to Appear

(a) If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court, or the court clerk, shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of Arrest Warrants or Summons. Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) Contents of Arrest Warrants. The warrant of arrest shall be signed, by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the Section of the Tribal Code alleged to have been violated. It shall order and command the defendant be

arrested and brought before a Judge of the Tribal Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

(d) Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) Service of Arrest Warrants and Summons.

(1) Warrants for Arrest and Criminal Summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made at any place within the jurisdiction of the Tribe.

(2) Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 a.m. and 9:00 p.m., unless an authorization to serve such process at night is placed on the face thereof by a Tribal Judge.

(3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonable possible.

(4) An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

Section 203. Criminal Citations

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

(1) The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

(2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

(4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Attorney General.

Section 204. Arraignment

(a) Arraignment Defined. Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the

accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(b) At Arraignment. Arraignments shall be conducted in the following order:

(1) The Judge or Magistrate should request the Attorney General to read the charges.

(2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.

(3) The Judge or Magistrate should determine that the accused understands the charge against him and explain to the defendant that he has the following rights;

(i) the right to remain silent.

(ii) to be tried by a jury upon request.

(iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.

(4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

(5) The Judge or Magistrate should then ask the defendant whether he wishes to plead "guilty", "nolo contendere", or "not guilty".

(c) Receipt of Plea at Arraignment. The defendant shall plead "guilty", "nolo contendere", or "not guilty" to the offense charged.

(1) If the defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.

(2) If the defendant pleads "not guilty", the Judge shall set a trial date and conditions for bail prior to trial.

(3) If the defendant pleads "nolo contendere" or "guilty" the Judge shall question the defendant personally to determine that the understands the nature of his action, the rights that he is waiving, and that his action is voluntary. The Judge may refuse to accept a guilty plea and enter a plea of "not guilty" for him. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

Section 205. Commitments

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge or Magistrate of the Tribal Court has been issued.

(a) A temporary commitment shall be issued pending investigation of charges or trial.

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court.

Section 206. Joinder

(a) Joinder of Offenses. Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:

- (1) They are part of a common scheme or plan, or
- (2) They arose out of the same transaction.

(b) Joinder of Defendants. Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

Section 207. Pleas

(a) A defendant may plead guilty, nolo contendere, or not guilty. The Court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

Section 208. Withdrawing Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

Section 209. Plea Bargaining

Whenever the defendant plead guilty as a result of a plea arrangement with the Attorney General, the full terms of such agreement shall be disclosed to the Judge. The Judge in his discretion, is not required to honor such agreement. In the event

that the Judge decides not to honor such agreement, he should offer the defendant an opportunity to withdraw his plea and proceed to trial.

Section 210. Pleading and Motions Before Trial: Defenses and Objections

(a) Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with this Act.

(b) Motions raising defenses and objections may be made as follows:

(1) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.

(2) Defenses and objections based on defects in the institution of the prosecution of the complaint other than it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

(3) Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.

(4) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules, or enter judgment as is appropriate in light of the decision.

Section 211. Concurrent Trial of Defendants or Charges

(a) The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.

(b) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial, the court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

Section 212. Discovery and Inspection

(a) The police, or prosecutor, shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific test or examinations relating to or done on the defendant.

(b) The defendant or his attorney shall reveal by written notice to the Court and the Attorney General at least five (5) working days before trial the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Section 213. Subpoena

(a) The defendant and the Attorney General shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

(b) A subpoena may be served any place within the jurisdiction of the Tribal Court, and as provided for service in civil cases.

(c) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.

CHAPTER THREE

TRIAL

Section 301. Trial By jury or By the Court

(a) All trials of offenses shall be by the Court without a jury unless the defendant files a request for a jury trial and a One Hundred Dollar (\$100.00) jury fee not less than ten business days prior to the date set for trial. A judge may in his discretion waive the jury fee if the defendant shows that he is without sufficient funds to pay the jury fee.

(b) Juries shall be composed of six (6) members with one alternate if an alternate jurors is deemed advisable by the Court.

(c) In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

Section 302. Trial Jurors

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Act.

(b) The Court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the Court itself may make such a examination.

(c) Challenges regarding jury members may be taken as follows:

(1) Each side shall be entitled to three (3) pre-emptory challenges.

(2) Either side may challenge any juror for cause;

(3) An alternate juror shall be treated as a regular juror for purpose of challenges.

(d) The alternate juror shall be dismissed prior to the jury's retiring to deliberation if he has not been called to replace on original juror who has become, for any reason, unable or disqualified to serve.

(e) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

Section 303. Order of Trial

The trial of all criminal offenses shall be conducted in the following manner:

(a) The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.

(b) If the parties are ready to proceed, and if the case is to be tried by jury, the judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.

(c) If the case is to a jury, the Court should select a potential jury panel as selected under the Civil Procedure Act by random and question them to determine if they have any interest in the case.

(d) When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.

(e) If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest

of the prospective juror, the Court shall dismiss him for cause and select another person from the jury panel.

(f) Both the prosecutor and the defendant may alternatively request the Court to dismiss any juror by pre-emptory challenge. Each party shall have three (3) pre-emptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.

(g) The Court should request the prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

(h) The prosecutor should then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be allowed. In reading the complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.

(i) The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

(j) The prosecutor shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the prosecutor may present evidence in rebuttal.

(k) The prosecutor shall then present his closing argument, the defendant his closing argument, and the prosecutor shall be allowed to present a rebuttal.

(1) If trial is to a jury, the Judge should give them his instructions and they shall retire to decide their verdict. If trial is to the judge, he shall then make his decision or announce the time at which he will present his decision.

(m) If the verdict is "not guilty", the defendant should be discharged and bail exonerated.

(n) If the verdict is "guilty", the judge may impose sentence immediately or may hold a hearing at a later time or date to decide on an appropriate sentence. In a case tried before a jury, the Court, after receiving a verdict of "guilty", shall inform the jury if banishment has been recommended as a punishment of the offense. The prosecution and the defense shall then be given an opportunity to present any additional evidence they may wish to present on the issue of whether banishment should be imposed, and the prosecution shall be given the final opportunity to rebut any defense evidence. The jury should then be requested to retire and consider whether banishment should be imposed and the maximum term thereof. No banishment shall be imposed in excess of the term recommended by a unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing the judge may hold a hearing to determine appeal bond if an appeal is filed.

Section 304. Trial By Judicial Panel

(a) In every trial for an offense punishable by imprisonment for more than three months in which a jury trial is not requested, the judge may, in his discretion, upon request of the defense or prosecution, order the matter to be heard by a three (3) judge panel.

(b) In every trial for an offense or offenses punishable by banishment in which a jury trial is not requested, and in which the Attorney General shall recommend in the complaint that banishment be imposed upon conviction, the Court shall order the case to be heard before a three (3) judge panel. If no recommendation for banishment is made in the complaint, or an amendment thereof, banishment may not be imposed.

(c) The Chief Judge shall assign three (3) Judges to sit on the judicial panel for trial, one of whom shall be designated as the presiding judge for that trial. Those judges shall be subject to disqualification only for good cause shown.

(d) The presiding judge in such cases shall rule on all motions, objections, and procedural questions, however, the judgment of conviction or acquittal shall be by majority vote. In cases in which banishment has been recommended, banishment may not be imposed unless there is a unanimous finding of guilt by the judicial panel and a unanimous agreement by the panel that banishment is a proper sentence and the term of banishment must be agreed upon by the judicial panel. The actual vote of each judge shall be held in strict confidence and only the actual decision shall be announced.

Section 305. Judge Disability

(a) If by reason of death, sickness or other disability, the judge before whom a jury has commenced is unable to proceed with the trial, any other Tribal judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

(b) If by reason, of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after the verdict or finding of guilt, any other Tribal Judge may perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

Section 306. Evidence

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Evidence Code of the Tribe, except as herein otherwise provided.

Section 307. Expert Witnesses and Interpreters

(a) Either party may call expert witnesses of their own selection and each bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The trial Judge or Clerk may act as interpreter only with the consent of all parties.

Section 308. Motion for Judgment of Acquittal

(a) The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

Section 309. Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge

or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

Section 310. Verdict

(a) Except as herein before provided in cases where banishment is recommended, the verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open court.

(b) The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried against before a new jury.

(c) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

(d) If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

(e) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(f) After return of the verdict, the jury may, in the judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the judge at sentencing except as otherwise provided in the case of sentences of banishment.

CHAPTER FOUR

JUDGMENT AND SENTENCE

Section 401. Judgment

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

Section 402. Sentence

Sentence shall be set forth as follows:

(a) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated, and this Act. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment.

(b) After imposing sentence, the Court shall inform the defendant of his right to appeal, and if so requested, shall direct the clerk to file a notice of appeal on behalf of the Defendant. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.

(c) Time served in jail prior to the judgment and sentence while awaiting or during trial shall be allowed as a credit toward any sentence of imprisonment or banishment imposed.

Section 403. General Sentencing Provisions

Statement of Policy. The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Tribe. While one goal of sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern Tribal sentencing for criminal offenses.

(a) Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law the Court shall:

(1) Order the offender to pay restitution to the victim in money, property, or services; and /or

(2) Order the offender to pay restitution to the Tribe in money, property, or services.

(b) In effectuating Tribal sentencing policy, if the offender recognizes the wrong he has committed, and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

(1) Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment, at the rate of eight (8) hours of work per twenty-five dollars (\$25.00) of fine; or

(2) Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; or

(3) Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum

sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict guilty will be withdrawn and said charges will be dismissed.

(4) In the discretion of the Court, allow the offender to pay a fine in goods or commodation at the fair market value of goods or commodities to be surrendered, provided, that the Tribe shall not reimburse the offender for any excess value of the property surrendered.

Section 404. Sentence of Banishment

(a) Banishment Defined. Banishment is the traditional and customary sentence imposed by the Tribe for offenders who have been convicted of offenses which violate the basic rights to life, liberty, and property of the community and whose violation is a gross violation of the peace and safety of the Tribe requiring the person to be totally expelled for the protection of the community. During the term of banishment, a person who is banished from the territory and association of the Tribe shall:

(1) Be considered legally dead and a nonentity with no civil rights to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction, provided, that the banished person retains all rights of a criminal defendant during any prosecution for an offense during the term of banishment, and while attending a going directly to or from any Court, or a proceeding involving a criminal action to which he is a party including the appeal of his case.

(2) Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court.

(3) Forfeit all positions or officers of honor or profit with the Tribe.

(4) Be absolutely ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe.

(5) Be absolutely ineligible to vote in any election conducted by or hold any office in the Tribe.

(6) Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon to satisfy the debt.

(b) Violation of Banishment.

(1) If the person banished be found within the jurisdiction of the Tribe not going directly to, attending, or returning from a Court hearing required in his case, such act shall be considered criminal contempt in violation of a lawful order of the court and may be punished accordingly.

(2) A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Tribe shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the court, forfeit to the Tribe all personal property brought by him into the jurisdiction of the Tribe or in his immediate control therein, whether ownership of said property is in the banished person or another, as civil damages for breach of the peace and safety of the Tribe.

(c) Expiration of Banishment Term. Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeited during the banishment and shall thereafter be treated as if banishment had never been imposed.

Section 405. New Trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court

without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Section 406. Arrest of judgment

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven-day period.

Section 407. Correction or Reduction of Sentence

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty days after the sentence is imposed, or within thirty days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

Section 408. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

CHAPTER FIVE

APPEAL

Section 501. Right of Appeal; How Taken

(a) The defendant has the right to appeal from the following:

(1) A final judgment of conviction; and the sentence imposed thereon.

(2) From an order made, after judgment and sentences, affecting his substantial rights.

(b) The Tribe has the right to appeal from the following:

(1) A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial;

(2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered.

(3) An order of the Court directing the jury to find for the Defendant;

(4) An order made after judgment and sentence affecting the substantial rights of the Tribe.

(c) A notice of appeal must be filed within 10 days of the entry of the final judgment and sentence or other appealable order and such must be served on all parties except the party filing the appeal.

(d) Such appeals shall be had in accordance with the Appellate Procedure Act.

Section 502. Stay of Judgment and Relief Pending Review

(a) A sentence of imprisonment a banishment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

(b) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the court may require the Defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirement for pay such.

(c) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

CHAPTER SIX

OTHER PROVISIONS

Section 601. Search and Seizure

(a) Search Warrants. A search warrant is an order directed to any Tribal or Federal law enforcement officer directing him to search a particular place for described persons or property and if found to seize them.

(b) A warrant shall issue only on an affidavit or affidavits sworn to before a Tribal Judge or Magistrate and establishing grounds for issuing the warrant. If the Judge or Magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the judgment may require the affiant to appear personally and be examined under oath.

(c) Contents of Search Warrants. Every search warrant shall contain the name and address of the Court and the signature of the Judge or Magistrate issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed by any Tribal or Federal police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed 10 days, the person or place named for the property or persons specified, and contain the date on which it was issued.

(d) Service of Search Warrants. Search warrants shall be served by any Tribal or Federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the Judge or Magistrate who issued it. A- copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the

premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if after notice of his authority and purpose, he is denied or refused admittance, when necessary to liberate himself, or a person aiding in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

(e) Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

(f) Return of Search Warrants.

(1) The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

(2) The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.

(3) In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

(g) Property Subject To Seizure. Property which is subject to seizure is property in which there is probable cause to believe such property is:

(1) Stolen, embezzled, contraband, or otherwise criminally possessed; or -

(2) Which is or has been used to commit a criminal offense; or

(3) Property which constitutes evidence of the commission of a criminal offense.

(h) Warrantless Searches. A law enforcement officer may conduct a search without a warrant only:

(1) Incident to a lawful arrest; or

(2) With the consent of the person to be searched, or

(3) With the consent of the person having actual possession and control of the property to be searched; or

(4) When he has reasonable grounds to believe that the person searched may be armed and dangerous; or

(5) When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure.

(6) In any other circumstances wherein federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

(i) A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property, not contraband, on the ground that he is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

(j) A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

(k) The term "property" is used in this Section to include documents, books, papers, and any other tangible object.

Section 602. Arrest

(a) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(b) A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

(1) When he has probable cause to believe that an offense has been committed in his presence.

(2) When he has probable cause for believing the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

(i) flee the jurisdiction or conceal himself to avoid arrest, or

(ii) destroy or conceal evidence of the commission of an offense, or

(iii) injure or annoy another person or damage property belonging to another person.

(c) A private person may arrest another, for prompt delivery to a law enforcement officer.

(1) When an offense is committed or attempted in his presence;

(2) When an arrest warrant for that person is in fact outstanding.

(d) Any person making an arrest may orally summon as many persons as he deems necessary to help him.

(e) If the offense charged is an offense punishable by banishment or in violation of the federal major crimes act, the arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrest at places other than at the residence may be made at any time.

(f) Any person, upon making an arrest:

(1) Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

(2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

(3) If a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law;

(4) If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

(5) May search the person arrested and take from him and put into evidence all weapons he may have about his person;

(6) Shall as soon as is reasonably possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

Section 603. Arrest in Hot Pursuit

(a) Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Tribe to any point of arrest within or without the jurisdiction of the Tribe and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

(b) Any law enforcement officer commissioned by the Federal Government, any Indian Tribe, or State of when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may validly arrest such person within the jurisdiction of the Tribe, provided, that any person so arrested shall be forthwith delivered to a Tribal Police Chief for a show cause hearing pursuant to the extradition laws of the Tribe.

Section 604. Limitation on Arrests in the Home A

person may be arrested in his own home only:

(a) By a law enforcement officer pursuant to an arrest warrant.

(b) By a law enforcement officer for an offense committed in the home in the presence of the officer.

(c) By a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.

Section 605. Notification of Rights

(a) Upon arrest, the defendant shall be notified that he has the following rights:

(1) The right to remain silent and that any statements made by him may be used against him in Court.

(2) That he has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.

(3) That if he wishes to answer the questions of the police he may stop or request time to speak with his attorney at any point in the questioning.

(b) Prior to conducting a consensual warrantless search pursuant to Section 601(h) (2) or (3) of this Chapter, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

(1) The search will be conducted only with the person's consent.

(2) That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.

(3) That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the Courts.

(c) Whenever possible, the officer should obtain a written statement that the person known these rights, understands, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

Section 606. Execution Order for Relief From Judgment

(a) The Chief Executive Officer of the Tribe shall have authority to pardon, or commute any judgment and sentence imposed for any criminal offense upon determination that a pardon or commutation of sentence promotes the ends of justice.

(b) Such pardon or commutation will be entered by filing a copy of the proposed action with the Court Clerk for a period of sixty (60) days after copy of the proposed executive action has been submitted for approval to each Justice of the Supreme Court and to each member of the Tribal Legislative Body. Within sixty (60) days after the filing thereof, with proof of service, any such Justice or Legislator shall disapprove the proposed pardon or commutation with written reasons, in writing delivered to the Chief Executive Officer and filed with the Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Chief Executive officer of the Tribe.

(c) Upon written reasons for disapproval of such proposed pardon or commutation by any Justice or Legislator referred to in (b) above, the Chief Executive Officer may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election to determine, by referendum vote of the Tribe, whether such pardon or commutation shall be granted. The vote of the people of the Tribe shall be conclusive.

Section 607. Grant of Immunity to Witnesses

Whenever a witness in any civil or criminal proceeding refuses, on the basis of his privilege against self-incrimination, to testify or to provide other information in a proceeding before or ancillary to the Court of the Osage Indian Tribe, and the judge presiding over the preceding shall delay any further testimony and immediately confer with the tribal prosecuting attorney concerning the witness's refusal to testify. If the tribal prosecuting attorney concurs, the judge shall communicate to the witness an order issued under this part and the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other

information compelled under the order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal, except a prosecution for perjury, giving false statement, or otherwise failing to comply to the order.

CHAPTER SEVEN

BAIL

Section 701. Release in Non Banishment Cases Prior to Trial

(a) Any person charged with an offense, other than an offense punishable by banishment, shall, at his appearance before a Judge or Magistrate of the Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by such judicial officer subject to the condition that such person shall not attempt to influence, injury, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

- (1) Place the person in the custody of designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
- (4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not any other judicial officer of the Court may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order

to impose additional or different conditions of release: Provided, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the Court Clerk and obtain his release prior to this appearance before a Judicial officer.

Section 702. Appeal From Conditions of Release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 701(d) or Section 701(e) by a Magistrate of the Court, may move the Court to amend the order and have such motion determine by a Judge of the Court. Said motion will be determined promptly.

(b) In any case in which a person is detained after (1) a Judge of the Tribal Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

Section 703. Release in Banishment Cases or After Conviction

A person (1) who is charged with an offense punishable by banishment or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 701 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to persons described in this Section.

Section 704. Penalties for Failure to Appear

Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall, (1) if he was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of \$500.00 and imprisonment for a term of six months, and if banishment is imposed, one year shall be added to the term of banishment otherwise imposed, or (2) if he was released in connection with a charge other than as described, in (1) above, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both, or (3) if he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both.

Section 705. Persons or Classes Prohibited as Bondsmen

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond; jailer, police officers, magistrates, judges,

court clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

Section 706. Authority to Act as Bail Bondsmen

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the Tribal Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme Court and District Court.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE VI

CRIMINAL OFFENSES

Prepared By:
Marvin E. Stepson
Attorney at Law
Fairfax, Oklahoma

October 1, 1993

Section 1: Short Title

This Ordinance may be cited as the Tribal Criminal Code.

Section 2: Application

(a) This ordinance shall apply to all Indian persons violating its provisions within the territorial jurisdiction of the Tribe, provided, that the provisions of Chapter Four of this ordinance shall apply to all members of the Tribe and all Indian residents of the jurisdiction of the Tribe where ever such violation may occur, if such violation has any actual or intended effect upon the political integrity or political or economic security of the Tribe.

(b) This ordinance shall apply to non-Indians to the extent not inconsistent with federal law and to the extent that any person found to have violated any provision of this act may be banished from the jurisdiction of the Tribe for a period of not more than ten years, or for such longer term as may be imposed by the Section violated, in a civil proceeding brought by the prosecutor. The non-Indian in such cases, shall have all the procedural rights of a criminal defendant, and such cases shall be tried by the rules of criminal procedure.

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CHAPTER ONE

CRIMES AGAINST PROPERTY

Section 101. Arson In The First Degree

(a) It shall be unlawful to knowingly and willfully start a fire or cause an explosion with the purpose of:

(1) Destroying or damaging any building, dwelling, occupied structure or other property of another exceeding One Thousand Dollars (\$1,000.00) in value; or

(2) Destroying or damaging any property, by whoever owned, to collect insurance for such loss.

(b) Arson in the First degree shall be punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00); or by imprisonment in the Tribal jail for a term of not less than three months nor more than six months; or by banishment for a period of not less than five nor more than ten years; or any combination of the above sentences.

(c) Should the commission of the offense result in the death of or serious injury to any person, a sentence of banishment may be imposed for any period not exceeding life in addition to the punishment authorized above.

Section 102. Arson In The Second Degree

(a) It shall be unlawful to knowingly or recklessly, carelessly, or negligently, without regard to the consequences start a fire or cause an explosion which:

(1) Endangers human or safety life, or

(2) Damages or destroys the property of another,

(b) Arson in the Second degree shall be punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

Section 103. Arson In The Third Degree

(a) It shall be unlawful after having started any fire, even though started safely for a lawful purpose, to fail to either:

(1) Take reasonable measures to put out or control the fire, or:

(2) To give prompt alarm, if the fire is spreading in such manner that it may endanger the life or property of another.

(b) Arson in the third degree shall be punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a period not exceeding three months, or both.

Section 104 Criminal Mischief

(a) It shall be unlawful to willfully and knowingly:

(1) Damage or destroy any property with the intent to defraud an insurer, or;

(2) Tamper with the property of another so as to recklessly endanger the safety of another, or recklessly cause any damage to any property or utility service, or;

(3) Damage, destroy, maim, or deface any domestic animal property of another, or;

(4) Purposely or recklessly shoot or propel a missile or other object upon or against a motor vehicle, airplanes, boat, locomotive or train.

(b) Criminal mischief shall be punishable by a fine of not more than Three Hundred Dollars (\$300.00), or by imprisonment in the Tribal jail for not more than three months, or both.

Section 105-109. Reserved

Section 110. Burglary

(a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, building, office, room, apartment, tenement, shop warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer, or semi trailer, mobile home, or any similar enclosed structure of another without consent with the intent to steal or commit any offense punishable by imprisonment.

(b) Burglary shall be punishable by a fine of not less than Two Hundred and Fifty Dollars (\$250.00); or, by imprisonment in the Tribal jail for not less than three months nor more than six months; or, by banishment for a period of not less than five years nor more than ten years; or by any combination of the above sentences.

(c) Should the commission of the offense result in the death of or serious bodily injury to any person, a sentence of banishment may be imposed for any period not exceeding life in addition to the punishment authorized above.

Section 111. Breaking Arid Entering

(a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, building, office, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle trailer or semi-trailer, mobile home, trunk, drawer, box, coin operated machine, or similar structure, object, or device or another without consent with the intent to:

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- (1) Cause annoyance or injury to any person therein,
or;
- (2) Cause damage to any property therein, or;
- (3) Commit any offense therein, or
- (4) Steal, or
- (5) Cause, or does actually cause, whether intentionally
or recklessly, fear for the safety of another.

(b) Breaking and Entering shall be punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a period not exceeding three months, or both.

Section 112. Criminal Trespass

(a) It shall be unlawful to enter onto, or remain upon the property of another if notice against entry or notice to leave the property has been given by:

- (1) Personal communication by the owner or someone having authority to act for the owner, or
- (2) Fencing, other than barbed wire or similar field fences except as hereafter provided, or other enclosure obviously designed to exclude intruders, or
- (3) Posting of signs prohibiting entry reasonable designed to come to the attention of intruders.

(b) Criminal Trespass shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding three months, or both.

(c) It is a complete affirmative defense to the offense of criminal trespass that:

(1) The property was open to the public upon entry and upon being ordered to leave the person did so without undue delay, or

(2) Even though not open to the public, the person did not substantially interfere with the use of the property or damage of any property, and upon being ordered to leave the person did so without undue delay.

(d) On rural lands fenced with barbed wire or other types of fencing normally meant to enclose or exclude domestic animals, signs prohibiting entry or use at least six inches by eight inches placed upon or in plain sight next to such fence not more than one hundred fifty feet apart shall create a rebuttable presumption that reasonable notice against entry or entry for certain purpose has been given.

Section 113-119. Reserved

Section 120. Larceny

(a) It shall be unlawful to take or carry away any tangible or intangible personal property by fraud or steal with the intent to deprive the owners thereof.

(b) Larceny shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property taken exceeds One Thousand Dollars, (\$1,000.00) a sentence of banishment for a period of not exceeding ten years may be imprisoned in addition to the punishment authorized above.

Section 121. Extortion

(a) It shall be unlawful to take, receive, or control the use or disposition of property of another with the intent to deprive his of the possession or use thereof by threatening to:

- (1) Cause bodily harm to any person, or
- (2) Commit any offense, or
- (3) Unlawfully injure or destroy any property, or
- (4) Expose any personal information or secret not public knowledge tending to expose any person to hatred, contempt, or ridicule, or to impair his business or reputation, except by institution of legal proceedings to recover the debt demanded or proper reports to bona fide credit agencies, or;
- (5) Unlawfully take or withhold official action.

(b) Extortion shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property extorted exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 122. False Pretenses

(a) It shall be unlawful to obtain, take, or receive any property of another by means of a trick or deception, or false or fraudulent representation, statement, or pretense with the intent to deprive the owner thereof.

(b) False Pretenses shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property gained by False Pretense exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 123. Embezzlement

(a) It shall be unlawful to wrongfully or fraudulently appropriate for a person's own use or the use of another any property of another with which the person has been entrusted.

(b) Embezzlement shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property embezzled exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 124. Receiving Stolen Property

(a) It shall be unlawful to possess, receive, buy, or conceal any personal property that has been stolen or otherwise obtained from its true owner in violation of this Act with the intent to deprive the true owner thereof.

(b) Receiving stolen property shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 125. Theft Of Property Lost, Mislaidd Or Delivered By Mistake

(a) It shall be unlawful to fail to take reasonable measures to restore property to a person entitled thereto, with the intent to deprive the owner thereof, when it is known or reasonable suspected that the property has been lost, mislaidd, or delivered under a

mistake as to the nature or amount of the property or the identity of the receipt.

(b) Theft of property lost, mislaid, or delivered by mistake shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the value of the property exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 126. Theft Of Services

(a) It shall be unlawful to obtain services known to the available only for compensation by deception, threat, force or any other means with the intent to avoid due payment therefore.

(b) It shall be unlawful for a person, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to his own use or benefit or to the use or benefit of another who he knows is not entitled to them

(c) In this section "services" includes but is not limited to, labor professional services, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made. In this section "Services" also includes gas, electricity, water, sewer, or cable television services, only if the services are obtained by threat, force, or a form of deception not described in Section 127

(d) Theft of Services shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(e) If the value of the service rendered exceeds One Thousand Dollars (\$1,000.00), a sentence of banishment for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

Section 127. Theft of Utility or Cable Television Services

(a) It shall be unlawful to commit any of the following acts which make gas, electricity, water, sewer, or cable television available to a tenant or occupant, including himself, without the payment of full compensation to the utility or cable television company. Any person aiding or abetting in these prohibited acts is a principle and is so punishable.

Prohibited acts include:

(1) connecting any tube, pipe, wire, cable, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, water, sewer, or cable television in a manner as permits the use of the gas, electricity, water, sewer, cable television without its passing through a meter or other instrument recording the usage for billing;

(2) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, water, sewer service, or making or maintaining any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by the company which the person is not authorized by the company to receive;

(3) reconnecting gas, electricity, water sewer, or cable television connections or otherwise restoring service when one or more of those utilities or cable television service have been lawfully disconnected or turned off by the provider of the utility or cable service;

(4) intentionally breaking, defacing, or causing to be broken or defaced any seal, locking device or other part of a metering device for recording the usage of gas, electricity, water, or sewer service, or a security system for the recording device, or a cable television control device;

(5) removing a metering device designed to measure quantities of gas, electricity, water, or sewer service;

(6) transferring from location to another a metering device for measuring quantities of public utility services of gas, electricity, water, or sewer service;

(7) changing the indicated consumption, jamming the measuring device, bypassing the meter, or measuring device with a jumper so that it does not indicate use or registers use incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from the utility without their passing through a metering device for measuring quantities of consumption for billing purposes;

(8) using a metering device belonging to the utility that a not been assigned to the location and installed by the utility;

(9) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility service diversion, meter tampering, meter thefts, and unauthorized cable television service;

(10) assisting or instructing any person in obtaining or attempting to obtain any cable television service without payment of all full compensation to the company providing the service;

(11) making or maintaining a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with any cables, wires, components, or other devices used for the distribution of cable television

services without authority from the cable television company; or

(12) possession without authority any device or printed circuit board designed in whole or in part to receive any cable television programming or services offered for sale over a cable television system, regardless of whether the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible, or to perform or facilitate the performance of any of the acts set out in subsections (1), (2), (3), (4), (10), and (11) with the intent that the device or printed circuit be used for the reception of the cable television company's services without payment. For the purposes of this subsection, device or printed circuit board does not include the use of a satellite dish or antenna.

(b) The presence on property in the possession of a person of any device or alteration which permits the diversion or use of utility or cable service to avoid the registration of the use by or on a meter installed by the utility or to avoid the recording or use of the service for payment or otherwise avoid payment gives rise to a presumption that the person in possession of a property installed the device or caused the alteration if the presence of the device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television service; and the person charged as received the direct benefit of the reduction of the cost of the utility or cable television service.

(c) Theft of utility or cable television services shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(d) As used in this section:

(1) "Cable television service" means any audio, video, or data service provided by a cable television company over its cable system facilities for payment, but does not include the use of a satellite dish or antenna.

(2) "Owner" includes any part-owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of any building and the property on which it is located.

(3) "Person" means any individual, firm, partnership, corporation, company, association or other legal entity.

(4) "Tenant or occupant" includes any person, including the owner, who occupies the whole or part of any building, whether alone or with others.

(5) "Utility" means any public utility, municipally-owned utility, or cooperative utility which provides electricity, gas, water, or sewer, or any combination of them for sale to consumers.

Section 128. Theft of Property Pursuant to Repair or Rental Agreement

(a) It shall be unlawful for a person, having custody of property pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair, or use of such property, he intentionally uses or operates it, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(b) having custody of any property pursuant to a rental or lease agreement where it is to be returned in a specified manner or at a specified time, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

(c) Theft of utility or cable television _services shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

Section 129. Library Theft

(a) It shall be unlawful to, for the purpose of converting to one's own use, and depriving the owner, conceal on his person or among his belongings library materials while on the premises of the library or willfully and without authority removes library materials from the library building with the intention of converting them to his own use.

(1) Any person who willfully conceals library materials on his person or among his belongings while on the premises of the library or in its immediate vicinity is prima facie presumed to have concealed library materials with the intention of converting them to his own use. If library materials are found concealed upon his person or among his belongings, or electronic security devices are activated by the person's presence, it is prima facie evidence of willful concealment.

(b) It shall be unlawful to intentionally or recklessly write upon, injure, deface, tear, mutilate, destroy, or otherwise damage library materials.

(c) It shall be unlawful for a person, having possession, or having been in possession library materials to:

(1) fail to return the materials within Thirty (30) days after receiving written notice demanding return of the materials; or

(2) if the materials are lost or destroyed, fails to pay the replacement Value of the materials within Thirty (30) days after being notified

(d) Written notice is considered received upon the sworn affidavit of the person delivering the notice with a statement as to the date, place, and manner of delivery, or upon proof that the notice was mailed postage prepaid, via the United States Postal service, to the current address listed for the person in the library records.

(e) Any employee of the library who has probable cause to believe that a person has committed library theft may detain the

person, on or off the premises of a library, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(1) to make reasonable inquiry as to whether the person has in his possession concealed library materials;

(2) to request identification;

(3) to verify identification;

(4) to make a reasonable request of the person to place or keep in full view any library materials the individual may have removed, or which the employee has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, or for any reasonable purpose;

(5) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; or

(6) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of the minor as soon as possible of this detention and to surrender custody of the minor to this person

(f) An employee may make a detention under this section off library premises only if the detention is pursuant to an immediate pursuit of the person.

(g) Library Theft shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) or by imprisonment in the Tribal jail for a period not exceeding three months or both.

Section 130. Unauthorized Use Of A Vehicle

(a) It shall be unlawful to take, drive, or operate another's motor vehicle, motorcycle, bicycle, or wheeled conveyance without

the consent of the owner, with the intent to temporarily deprive the owner of its use or possession.

(b) Unauthorized use of a vehicle shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

(c) If the vehicle sustains damages while in the custody, possession, or under the control of the person violating his section, the violator shall be required to make double restitution of the amount of the actual damage to the vehicle.

Section 131-135. Reserved.

Section 136. Forgery

(a) It shall be unlawful to alter any writing of another without his authority, or to make, complete, execute, authenticate, issue or transfer any writing so that it purports to be the act of another who did not authorized that act, with the intent to defraud or injury anyone.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, and other symbols of value, right, privilege, or identification.

(c) Forgery shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or by a sentence of banishment for a period not less than one year nor exceeding five years, or any combination of the above punishments. Upon a second or subsequent conviction for forgery, a sentence of banishment for a period not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

Section 137. Criminal Simulation

(a) It shall be unlawful to make, alter or utter or attempt to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess, with intent to defraud anyone.

(b) Criminal simulation shall be punishable by a fine exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

Section 138. Fraudulent Handling Of Recordable Instruments

(a) It shall be unlawful to destroy, remove or conceal any will, deed, mortgage, security instrument, Tribal resolution, any Tribal record, for which the law provides public recording, or to knowingly record a false or forged instrument, with the intent to deceive or injury anyone, or to conceal wrong doing.

(b) Fraudulent handling of recordable instruments shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or by sentence of banishment for a period not less than one year nor exceeding five years, or any combination of the above punishments. Upon a second conviction for fraudulent handling of recordable instruments, a sentence of banishment for a period not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

Section 139. Tampering With Records

(a) It shall be unlawful to falsify, destroy, remove, or conceal any writing or record, with the intent to deceive or injure anyone or to conceal any wrong doing.

(b) Tampering with records shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or by both fine and

imprisonment, or by a sentence of banishment for a period not less than one year nor exceeding five years, or any combination of the above punishments. Upon a second conviction for tampering with records, a sentence of banishment for a period not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

Section 140. Bad Checks

(a) It shall be unlawful to issue or pass a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(b) Bad checks shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both. Restitution shall be required.

Section 141. Fraudulent Use Of A Credit Card

(a) It shall be unlawful to use a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card was stolen; or

(2) The card has been revoked or canceled; or

(3) For any other reason his use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.

(b) Fraudulent use of a credit card shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both. Restitution shall be required.

Sections 142-146. Reserved

Section 147. Deceptive Business Practices

(a) It shall be unlawful to, in the course of business, intentionally:

(1) Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sell, offer, or expose for sale, or deliver less than the represented quality or quantity of any commodity or service; or

(3) Take or attempt to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(4) Sell, offer or expose for sale adulterated or mislabeled commodities:

(i) "adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage; or

(ii) "mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or

(5) Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or

(6) Make a false or misleading written statement for the purpose of obtaining property or credit; or

(7) Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit

information required by law to be disclosed in written documents relating to securities.

(b) Deceptive business practice shall be punishable by a fine not exceeding Five Hundred Fifty Dollars (\$550.00), or by imprisonment in the Tribal jail for a term not exceeding three months, or both.

(c) It is an affirmative defense to deceptive business practice that the defendant's conduct was not knowingly or recklessly deceptive.

(d) Upon a second or subsequent offense, banishment for a period of not more than ten years may be imposed in addition to the punishment authorized above.

Section 148. Defrauding Creditors

(a) It shall be unlawful to:

(1) Destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest; or

(2) Deal with property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or knowingly falsify any writing or record relating to the property; or knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(b) Defrauding creditors shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by imprisonment in the Tribal jail for a term not exceeding three months, or both.

Section 149. Securing Execution Of Documents By Deception

(a) It shall be unlawful to intentionally, and by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

(b) Securing execution of documents by deception shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by imprisonment in the Tribal jail for a term not exceeding three months, or both.

Section 150. Criminal Usury

(a) It shall be unlawful to intentionally provide financing or make loans at a rate of interest higher than the following:

(1) If the amount to which the interest applies is less than One Hundred Dollars (\$100.00) or the period of the loan or financing is less than one year, or both, the rate of interest shall not exceed a 24% per annum simple interest rate.

(2) If the amount to which the interest applies is greater than One Hundred Dollars or the period of the loan or financing is greater than one year, or both, the rate of interest shall not exceed an 18% per annum simple interest rate.

(b) Criminal usury shall be punishable by a fine not exceeding Two Hundred Fifty Dollars, or by imprisonment in the Tribal jail for a term not exceeding three months, or both. The victim shall be entitled to restitution for double the actual amount of interest which was actually paid and cancellation of all interest owing for the term of the financing.

Section 151. Unlawful Dealing With Property By A Fiduciary

(a) It shall be unlawful to knowingly deal with property that has been entrusted to one in a fiduciary capacity, or property of the Tribal government or of a financial institution, in a manner which is

known to be a violation of his fiduciary duty, or which involves a substantial risk or loss to the owner or to a person for whose benefit the property was entrusted.

(b) As used in this section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(c) Unlawful dealing with property by a fiduciary shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term not exceeding one year, or both.

Section 152. Making A False Credit Report

(a) It shall be unlawful to knowingly make materially false or misleading statement to obtain property or credit for oneself or another or to keep some other person from obtaining credit.

(b) Making a false credit report shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by imprisonment in the Tribal jail for a term not exceeding three months, or both.

Sections 153-159. Reserved

Section 160. Computer Crimes Computer

Crimes and penalties:

(a) It shall be unlawful for any person to attempt, or to gain access to and without authorization intentionally, and to the damage of another, alters, damages, destroys, discloses, or modifies any computer, computer system, computer network, computer property, program, or software.

(b) It shall be unlawful for any person to intentionally and without authorization use a computer, computer network, computer property, or computer system to gain or attempt to gain access to any other computer, computer network, computer property, or computer system, program, or software to the damage of another, and alters , damages, destroys, discloses, or modify, any of these.

(c) It shall be unlawful for any person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations.

(d) It shall be unlawful for any person to intentionally and without authorization, interfere with or interrupt computer services to another authorized to receive the services.

(e) It shall be unlawful for any person to intentionally and without authorization damage or destroy, in whole or in part, any computer, computer network, computer property, or computer system.

(f) As used in this section:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with them.

(2) "Computer" means any electronic devise or communication facility with data processing ability.

(3) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(4) "Computer network" means the inter-connection of communication or telecommunication lines between computers or computers and remote terminals.

(5) "Computer property" includes but is not limited to, electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable form any other tangible to intangible item relating to a computer, computer system, computer network, and copies of any of them.

(6) "Services" include but are not limited to, computer time, data manipulation, and storage functions.

(7) "Financial instrument" includes, but is not limited to, any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(8) "Software" or "Program" means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the function of computer system in a manner designed to provide results including, but not limited to, system control programs, application programs, or copies of any of them.

(g) A violation of this section shall be punishable by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the Tribal jail for term not exceeding one year, or both.

CHAPTER 2

CRIMES AGAINST PERSONS

Section 201. Assault In The First Degree

(a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly under circumstances manifesting indifference to the value of human life, to:

(1) Attempt to cause or cause serious bodily injury to another; or

(2) To use a deadly weapon with the intent to cause serious bodily injury, or with the intent to put in fear of imminent serious bodily injury with the apparent ability to do so.

(b) Assault in the first degree shall be punishable by a fine not to exceed Five Hundred Dollars, or by a term of imprisonment in the Tribal jail not to exceed six months, or banishment for a term of not less than one year nor more than ten years or any combination of the above punishments.

Section 202. Assault In The Second Degree

(a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly:

(1) Attempt to cause or cause bodily injury to another; or,

(2) Negligently cause bodily injury to another with a weapon; or,

(3) Attempt by a show of force or violence to put another in fear of imminent bodily injury to another, whether or not such harm actually occurs.

(b) Assault in the second degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 203. Mayhem

(a) It shall be unlawful to wrongfully, purposely, or knowingly deprive a human being of a member of his body or render it useless, or to cut out or disable the tongue, put out an eye or eyes, or slit the nose, ear or lip of another.

(b) Mayhem shall be punishable to a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or banishment for a term of not less than one year nor more than life or any combination of the above punishments.

Section 204. Verbal Or Written Assault

(a) It shall be unlawful to threaten verbally or in writing to commit any offense involving with apparent ability to do so:

(1) With intent to terrorize another or place such other in fear of imminent serious bodily injury or

(2) To cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience.

(b) Verbal or written assault shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or both.

Sections 205-210. Reserved

Section 211. Homicide in the First Degree

(a) It shall be unlawful to:

(1) Purposely, knowingly and wrongfully with the malice aforethought cause the death of another human being, or

(2) Cause the death of another human being due to the commission or attempted commission of a felony or an offense punishable by banishment.

(b) Homicide in the first degree shall be punishable by a fine of Five Thousand Dollars (\$5,000.00) or by a term of imprisonment in the tribal jail not to exceed one (1) year or by banishment for a period not less than ten years nor more than life, or any combination of the above.

Section 212. Homicide in the Second Degree (a) It

shall be unlawful to :

(1) Recklessly or negligently, with disregard of the consequences of one's conduct to cause the death of another human being; or,

(2) Cause the death of another human being by operating a motor vehicle in a reckless, negligent, or careless manner, or while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle.

(i) a blood alcohol content in excess of .10 shall create a rebuttable presumption that the person was under the influence of an alcoholic beverage.

(ii) for purposes of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited

to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft or snowmobile.

(3) Cause the death of a human being due to the commission of any criminal offense.

(b) Homicide in the second degree shall be punishable by a fine of One Thousand Dollars (\$1,000.00), or by term of imprisonment in the tribal jail not to exceed one year; or by banishment for a period not less than one year nor more than twenty years; or any combination of the above.

Section 213. Causing A Suicide

(a) It shall be unlawful to intentionally cause a suicide by force, duress, or deception.

(b) Causing a suicide shall be punishable by a fine not to exceed One Thousand Dollars, or by a term of imprisonment in the Tribal jail not to exceed one year, or by banishment for a period of not less than one year nor more than twenty years or any combination of the above.

Section 214. Aiding Or Soliciting A Suicide

(a) It shall be unlawful to intentionally aid or solicit another to attempt or commit suicide.

(1) Aiding or soliciting shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term or imprisonment in the Tribal jail not to exceed one year, or both, if the defendant's conduct has actually caused or contributed substantially to a suicide, or attempted suicide:

(2) Otherwise, aiding or soliciting a suicide is punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Sections 215-220. Reserved

Section 221. Kidnapping

(a) It shall be unlawful to intentionally and wrongfully remove another from his place of residence, business, or from the vicinity where is found, or to unlawfully confine or conceal another for a substantial period, with any of the following purposes:

(1) To hold for ransom or reward, or as a shield or hostage; or

(2) To facilitate commission of any offense or flight thereafter; or

(3) To inflict bodily injury on or to terrorize the victim or another; or

(4) To interfere with the performance of any Tribal governmental or political function.

(b) A removal, restraint, or confinement is wrongful within the meaning of this Code if it is accomplished by force, threat or deception, or, in the case of a person under the age of fourteen or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

(c) Kidnapping shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for a period not less than five years nor more than ten years if the kidnapping resulted in bodily injury; or by banishment for a period not less than five years nor more life in the case of a second or subsequent conviction for kidnapping or if death resulted; or any combination of the above.

Section 222. False Imprisonment

(a) It shall be unlawful to knowingly and wrongfully restrain or imprison another so as to interfere with his liberty.

(b) False imprisonment shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both, unless the detention occurs under circumstances which expose the victim to a risk of serious bodily injury, in which case the offense shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 223. Custodial Interference

(a) It shall be unlawful to wrongfully:

(1) Take, entice, conceal, or detain a child under the age of sixteen from his parent, guardian or other lawful custodian, knowing he has no legal right to do so, and

(i) with the intent to hold the child for period substantially longer than any visitation or custody period previously awarded by a court of competence jurisdiction; or

(ii) with the intent to deprive another person of their lawful visitation or custody rights; or

(2) Intentionally take, entice or detain an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, without good cause and with knowledge that there is no legal right to do so.

(b) Custodial interference shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00) or by a term of imprisonment in the Tribal jail not to exceed three months or both.

Section 224. Criminal Coercion

(a) It shall be unlawful to intentionally and wrongfully restrict another's freedom of action to his detriment, by threatening to:

(1) Commit any criminal offense; or

(2) Accuse anyone wrongfully of a criminal offense; or

(3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(4) Unlawfully take or withhold action as an official, or cause an official to take or withhold action.

(b) It is an affirmative defense to prosecution based on this section, except for subsection (1) above, that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other in a lawful manner to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, as by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(c) Criminal coercion shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Sections 225-230. Reserved

Section 231. Rape in the First Degree

(a) It shall be unlawful to intentionally and wrongfully:

(1) Compel another to submit to sexual intercourse by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else; or,

(2) Engage in sexual intercourse with a person under the age of fourteen, regardless of consent.

(b) Rape in the first degree shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for a period not less than five years nor more than life; or any combination of the above.

Section 232. Rape in the Second Degree.

(a) It shall be unlawful to intentionally and wrongfully:

(1) Compel another to submit to sexual intercourse by any threat that would prevent resistance by a person of ordinary resolution; or

(2) Engage in sexual intercourse with another whose power to appraise or control their conduct has been substantially impaired by the administration or employment of drugs or other intoxicants, without their knowledge, and for the purpose of preventing resistance; or

(3) Engage in sexual intercourse with a person with the knowledge that the person suffers from a mental disease or defect which renders that person incapable of appraising the nature of their conduct; or

(4) Engage in sexual intercourse with a person who is unconscious or with a person who is unaware, or with a person who submits because they falsely suppose that the person is their spouse; or

(5) Engage in sexual intercourse with a person under the age of sixteen but over the age of fourteen, regardless of consent, the perpetrator being at least four years older than the victim.

(b) Rape in the second degree shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00); or by a term of imprisonment in the tribal jail not to exceed one year; or by banishment for a period not less than one year nor more than five years; or any combination of the above.

Section 233. Deviate Sexual Intercourse

(a) It shall be unlawful to engage in deviate sexual intercourse, defined as sexual intercourse per os or per anum between human beings who are not husband and wife, or any form of sexual intercourse with an animal, and it shall be unlawful to cause another to engage in deviate sexual intercourse if:

(1) That person is compelled to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(2) That person is compelled to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(3) The other person's power to appraise or control his conduct has been substantially impaired by the administration or employment of drugs or other intoxicants, without his knowledge, and for the purpose of preventing resistance; or

(4) The offender has knowledge that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of this conduct or the offender has knowledge that the other person is unconscious or submits because he is unaware that a sexual act is being committed upon him; or

(b) Deviate sexual intercourse shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 234. Sexual Assault

(a) It shall be unlawful to intentionally, wrongfully, and without consent subject another, not his/her spouse, to any sexual contact:

(1) With knowledge that the conduct is offensive to the other person; or

(2) With knowledge that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or

(3) With knowledge that the other person is unaware that a sexual act is being committed; or

(4) After having substantially impaired the other person's power to appraise or control his conduct by administering or employing without the other's knowledge drugs, intoxicants, or other means for the purpose of preventing resistance; or

(5) If that person is less than fourteen years old regardless of consent; or

(6) If that person is less than sixteen years old and the actor is at least four years older than the person regardless of consent; or

(7) If that person is less than twenty-one years old and the actor is his parent, guardian or otherwise responsible for general supervision of his welfare regardless of consent; or

(8) If that person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him regardless of consent.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person of another or otherwise taking indecent liberties with another for the purpose of arousing or gratifying sexual desires of either party.

(c) Sexual assault shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Sections 235-240. Reserved

Section 241. Robbery

(a) It shall be unlawful to take anything of value from the person of another or from the immediate control of another by use of force or violence, with the intent to permanently deprive the owner thereof.

(b) Robbery shall be punishable by a fine not to exceed One Thousand Dollars (\$1,00.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or, when any person is seriously injured as a result of a violation of this section, banishment for a period not less than one year nor more than five years may be imposed.

CHAPTER THREE

INCHOATE CRIMES

Section 301. Attempt

(a) It shall be unlawful to engage in conduct within the Tribal jurisdiction constituting a substantial step toward commission of any offense under Tribal, Federal, or State laws applicable to the jurisdiction in which any part of the offense was to be completed with the kind of culpability otherwise required for the commission of the offense.

(b) Anywhere constituting a substantial step toward the commission of any Tribal or Federal offenses within the Tribal jurisdiction while acting with the kind of culpability otherwise required for the commission of the offense.

(c) Attempts shall be punishable by the same penalties as the completed crime.

Section 302. Criminal Conspiracy

(a) It shall be unlawful to agree within the Tribal jurisdiction with one or more persons to engage in or cause the performance of conduct with the intent to commit any offense punishable by Tribal, Federal, or State laws applicable to the jurisdiction in which the conduct is agreed to be performed, and any one person commits an overt act in pursuance of the conspiracy.

(b) Anywhere with one or more persons to engage or cause the performance of conduct with the intent to commit any Tribal or Federal offense within the Tribal jurisdiction and anyone commits an overt act in pursuance of the conspiracy.

(c) Conspiracy to commit an offense carries the same possible punishment as the completed offense.

Section 303. Solicitation

(a) It shall be unlawful within the Tribal jurisdiction to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable under the laws of the jurisdiction where the conduct was to be performed.

(b) In any place, entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable by Tribal, Federal, or State laws within the Tribal jurisdiction.

(c) Solicitation shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or by a term of imprisonment in the Tribal jail not to exceed two months, or both.

CHAPTER FOUR

CRIMES AGAINST PUBLIC JUSTICE

Section 401. Bribery

(a) It shall be unlawful to ask for, give, or accept any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, given with a wrongful or corrupt intent influence unlawfully the person to whom it is given.

(b) Bribery shall be punishable by a fine not to exceed Five Hundred Dollars; or by a term of imprisonment in the Tribal jail not to exceed six months, or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years nor more than life.

Section 402. Improper Influence In Official Matters (a) It

shall be unlawful to:

(1) Threaten unlawful harm to any person with intent to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or

(2) Threaten harm to any public servant or relative of a public servant with the intent to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative, or administrative proceeding; or

(3) Threaten harm to any public servant or officiator relative of either with the intent to influence him to violate his duty; or

(4) Privately address any public servant who has or will have an official discretion in a judicial or administrative proceeding and making thereby any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(c) Improper influence in official matters shall be punishable by a fine not to exceed One Thousand Dollars; or by a term imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 403. Retaliation For Past Official Action

(a) It shall be unlawful; to harm any person by any unlawful act in retaliation for anything lawfully done by another person in his capacity as a public servant.

(b) Retaliation for past official action shall be punishable by a fine not to exceed One Thousand Dollars; or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 404. Improper Gifts To Public Servants

(a) It shall be unlawful to knowingly confer or offer or agree to confer any benefit to a public servant with the intent to induce an

exercise of their discretion in an unlawful manner, or to undermine official impartiality.

(b) This section shall not apply to:

(1) Fees prescribed by law to be received by public servant, or any benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or

(2) Gifts or other benefits conferred on account of kinship, traditional ceremonies, or other personal, professional or business relationship independent of the official status of the receiver; or

(3) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Improper gifts to public servants shall be punishable by a fine not to exceed One Thousand Dollars; or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 405. Unofficial Misconduct

(a) It shall be unlawful to exercise or attempt to exercise any of the functions of a public office when one has not been elected or appointed to office.

(b) Unofficial misconduct shall be punishable by a fine not to exceed One Thousand Dollars; or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 406. Oppression In Office

(a) It shall be unlawful when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, with knowledge that such conduct is illegal, to:

(1) Subject another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement or personal or property rights; or;

(2) Deny or impede another in the exercise or enjoyment of any right, power, or immunity.

(b) Oppression in office shall be punishable by a fine not to exceed One Thousand Dollars; or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years nor more than life.

Section 407. Misusing Public Money

(a) It shall be unlawful for a person charged with the receipt, safekeeping, transfer or disbursement of public monies to:

(1) Without lawful authority appropriate the money or any portion of it to his own use or the use of another; or

(2) Loan the money or any portion thereof without lawful authority; or

(3) Fail to keep the money in his possession until lawfully disbursed or paid out according to law; or

(4) Deposit the money in an unauthorized bank or with a person not lawfully authorized to receive such; or

(5) Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money; or

(5) Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money; or

(6) Fraudulently alter, falsify, conceal, destroy, or obliterate any such account; or

(7) Knowingly refuse or omit to pay over on lawful demand by competent authority any public monies in his hands; or

(8) Knowingly omit to transfer money when transfer is required by proper authority; or

(9) Make a profit for himself or another when not lawfully entitled to such, or in an unlawful manner, out of public monies; or

(10) Fail to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or

(11) Otherwise handle public money in a manner not authorized by law for his own benefit or the

(12) Handle public money in a reckless manner as a result of which a risk of loss of such money is significant.

(b) "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

(c) Misusing public money shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years or more than the years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed nor not less than ten years not more than life.

Section 408. Perjury In The First Degree

(a) It shall be unlawful, in any official proceeding, to make a false statement under oath or equivalent affirmation, or swear or affirm the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the court.

(c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(f) Perjury in the first degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 409. Perjury In The Second Degree

(a) It shall be unlawful to:

(1) Make any written false statement which he does not believe to be true; or

(2) Purposely create a false impression in a written application for any benefit by omitting information necessary to prevent statements therein from being misleading; or

(3) Submit or invite reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(4) Submit or invite reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false;

with a purpose to mislead a public servant in performing his official function.

(b) A person is guilty of unsworn falsification if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(f) Perjury in the second degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 410. Tampering With Witnesses (a) It

shall be unlawful:

(1) While believing that an official proceeding or investigation is pending or about to be instituted, to attempt to induce or otherwise cause a person to:

(i) testify or inform falsely; or

(ii) withhold any testimony, information, document or thing, or

(ii) elude legal process summoning him to testify or supply evidence; or

(iv) absent himself from any proceeding or investigation to which he has been legally summoned; or

(2) To harm another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or

(3) To solicit, accept or agree to accept any benefit in consideration for doing any of the things specified in this section.

(b) Tampering with witnesses shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year or both.

Section 411. Tampering With Evidence

(a) It shall be unlawful, while believing that an official proceeding or investigation is pending or about to be instituted, to:

(1) Alter, destroy, conceal or remove any record, document, or thing with the intent to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

(c) Tampering with evidence shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or by combination for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 412. Tampering With Public Records (a) It

shall be unlawful to:

(1) Knowingly make a false entry in, or false alteration of, any record, document for thing belonging to or received or kept by, the Tribe or government for information or record, or required by law to be kept by others for information of the Tribe or government; or

(2) Make, present or use any record, document, or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in subsection (1) above; or

(3) Purposely and unlawfully destroy, conceal, remove or otherwise impair the truth or availability of any such record, document or thing.

(b) Tampering with Public Records shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00); or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or both combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years not more than life.

Section 413. Impersonating A Public Servant

(a) It shall be unlawful to falsely pretend to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(b) Impersonating a public servant shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term or imprisonment in the Tribal jail not to exceed one year, or both.

Section 414. Obstructing Governmental Function (a) It

shall be unlawful to:

(1) Use force, violence, intimidation, or engage in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(2) Purposely obstruct, impair, or prevent the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with

law without affirmative interference with governmental functions.

(b) Obstructing governmental function shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Sections 415-425. Reserved

Section 426. False Arrest

(a) It shall be unlawful for any public officer or person pretending to be a public officer to, under the pretense or color of any process or other legal authority, arrest to detain any person against his will, except where such person reasonably believes he is authorized by law to do so.

(b) False arrest shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 427. Refusing To Aid An Officer

(a) It shall be unlawful to knowingly or recklessly refuse to aid a law enforcement officer or fireman in the performance of his official duties when called upon by the officer to do so.

(b) Refusing to aid an officer shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 428. Obstructing justice

(a) It shall be unlawful, with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:

(1) Harbor or conceal the other; or

(2) Provide or aid in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(3) Conceal or destroy evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(4) Warn the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law, or

(5) Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of another; or

(6) Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

(b) Obstructing justice shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both, unless the recipient of any of the above aid has been previously sentenced to banishment, in which case a conviction under this section may result in both parties being banished for a term equal to one half of the original sentence of banishment, plus a fine up to Five Hundred Dollars (\$500.00).

Section 429. Providing Contraband

(a) It shall be unlawful to provide any person in official detention with alcoholic beverages, drugs, weapons, impeniments of escape, or any other thing or substance which the actor know is improper or unlawful for the detainee to possess.

(b) Providing contraband shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 430. Resisting Lawful Arrest

(a) It shall be unlawful to create a substantial risk of bodily harm to anyone or employ means of resistance justifying or requiring force to overcome the resistance for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person.

(b) Resisting lawful arrest shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 431. Escape

(a) It shall be unlawful to:

(1) Remove oneself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or period; or

(2) Knowingly procure, make, or possess anything which may facilitate escape while being held in official detention; or

(3) Aid another person to escape official detention; or

(4) Knowingly provide a person in official detention with anything which may facilitate such a person's escape.

(b) "Official detention" means arrest, detention in any facility for custody of person under charge or convicted of crime; or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

(c) Escape shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 432. Bail jumping

(a) It shall be unlawful to fail without just cause to appear in person, after having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense.

(b) Bail jumping shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 433. Failure To Obey A Lawful Order Of The Court

(a) It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Tribe or any officer thereof of otherwise issued according to law without just cause.

(b) This Section shall not apply to a failure to appear as a party in a civil action where default or a similar remedy is available to the other party.

(c) Failure to obey a lawful order of the court shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 434. Unlawful Return Of Banished Persons

(a) It shall be unlawful for any person under sentence of banishment during the term of such banishment, to:

(1) Physically return to the territorial jurisdiction of the Tribe except while actually traveling upon a public highway, or as allowed by law, or

(2) To apply for or attempt to claim any right, privilege or immunity by virtue of membership in the Tribe except as provided by law.

(b) Unlawful return of Banished persons shall be punishable by a fine of One Thousand Dollars (\$1,000.00), and by imprisonment in the Tribal jail for a term not exceeding one year, and by banishment for a term equal to the original term of banishment which was violated.

(c) In addition, any personal property of every kind and description which the banished person brought with him or used to return to the tribal jurisdiction shall be contraband and forfeited to the Tribe, by civil forfeiture provided, that if any of said property belongs to another, that person, if known, shall be served with civil process, as in forfeiture proceeding and may defend by showing that the banished person did not have permission to use or possess the property or to enter the Tribal jurisdiction with that property.

Section 435. Aiding Return Of Banished Persons

(a) It shall be unlawful for any person to aid, abet, or assist a person under sentence of banishment to:

(1) Physically return to the territorial jurisdiction of the Tribe except while actually traveling upon a public highway, or as allowed by law: or

(2) Apply for or attempt to claim any right, privilege, or immunity by virtue of membership in the Tribe except as allowed by law.

(b) Aiding return of banished persons shall be punishable by a fine of One Thousand Dollars (\$1,000.00) and by imprisonment in the Tribal jail for a term not exceeding six months, and by

banishment for a period not in excess of one-half of the term for which the returned person was banished.

(c) In addition, any personal property of every kind and description which the banished person brought with him or used to return to the Tribal jurisdiction shall be contraband and forfeited to the Tribe, by civil forfeiture provided, that if any of said property belongs to another, that person, if known, shall be served with civil process, as in forfeiture proceedings, and may defend by showing that the banished person did not have permission to use or possess the property or to enter the Tribal jurisdiction with that property.

Section 436-439. Reserved

Section 440. False Alarms

(a) It shall be unlawful to knowingly:

(1) Cause a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or

(2) Give false information to any law enforcement officer with purpose to implicate another in an offense; or

(3) Report to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or

(4) Pretend to furnish law enforcement authorities with information relating to an offense or incident when one knows he has not information relating to such offense or incident; or ...

(5) Give a false name or address to a law enforcement officer in the lawful discharge of his official duties.

(b) False alarms shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 441. Doing Business Without A License

(a) It shall be unlawful to commence or carry on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.

(b) Doing business without a license shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 442. Tampering With Public Property

(a) It shall be unlawful to:

(1) Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or file in any public office, or with any public officer, or to permit another to do so; or

(2) Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey of the tribe or federal government without authority to do so; or

(3) Intentionally deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice set up or displayed by any public officer or court; without authority to do so and before the expiration of the time for which the same was to remain set up.

(b) Tampering with public property shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term

of imprisonment in the Tribal jail not to exceed three months, or both.

Section 443. Injuring Public Property

(a) It shall be unlawful to:

(1) Intentionally break down, pull down or otherwise injure or destroy any jail or other place of confinement: or

(2) Intentionally and without authority dig up, remove, displace or otherwise injure or destroy any public roadway highway or bridge or private road or bridge or other public building or structure; or

(3) Remove or injure any milepost, guidepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway.

(4) Knowingly and without authority to do so, remove, injure, deface, or destroy any public or structure, or any personal property belonging to the Tribe to any other government or government agency.

(b) Injuring public property shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

Section 444-450. Reserved

Section 451. Compensation For Past Official Behavior

(a) It shall be unlawful to solicit accept or agree to accept any financial benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or offer, confer or agree to-confer compensation acceptance of which is prohibited by this section.

(b) Compensation for past official behavior shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years nor more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years nor more than life.

Section 452. Official Unlawful Action

(a) It shall be unlawful, being a public servant, and with the intent to materially benefit himself or another or to harm another, to:

(1) Knowingly commit an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a non-discretionary duty imposed on him by law, or

(2) Knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(i) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

(ii) speculates or wagers on the basis of such action or information, or knowingly aid another to do any of the foregoing.

(b) Official unlawful action shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by a term or imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years not more than ten years; or an5Tcombination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years nor more than life.

Section 453. Special Influence

(a) It shall be unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant, in order to influence that public servant to violate the law or to exercise his discretion in a particular fashion or procuring another to do so; or to offer, confer or agree to confer any financial benefit receipt of which is prohibited by this section.

(b) Special influence shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed one year; or by banishment for not less than five years not more than ten years; or any combination of the above authorized punishments. For a second or subsequent conviction under this section, banishment may be imposed for not less than ten years nor more than life.

(3) A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in such position as next to be fired.

(b) It shall be unlawful to:

(1) Have a dangerous weapon in one's actual possession:

- a. While being addicted to any narcotic drug; or
- b. After having been declared mentally incompetent; or
- c. While being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine; or
- d. While possessing the intent to unlawfully assault another; or
- e. While under the age of sixteen years old.

(2) Carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so; or to discharge a firearm from, upon or across any public highway without lawful authority to do so.

(c) Weapons offense shall be punishable by a fine not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or by a term in of imprisonment in the Tribal jail not to exceed one year, or both.

(d) A sentence of banishment for a period of not less than three years but to a maximum of life may be imposed in addition to the punishment authorized above.

Section 508. Aggravated Weapons Offense

(a) It shall be unlawful to carry a dangerous weapon concealed on the person or to threaten to use or exhibit a dangerous weapon in a dangerous and threatening manner, or use a dangerous weapons in a fight or quarrel; or to possess a dangerous weapon at any meeting held pursuant to the Tribal Constitution or Tribal laws, including, but not limited to, Tribal Council meetings, Election Committee meetings, and all sessions of the Tribal Court; (or to possess a shotgun or rifle having a barrel or barrels of less than sixteen inches in length or an altered or modified shotgun or rifle less than twenty-four inches in all in length).

(b) Aggravated weapons offense shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the Tribal jail not to exceed one year, or both.

(c) A sentence of banishment for a period not less than five years but to a maximum life may be imposed in addition to the punishment authorized above.

(d) Tribal Police and other deputized officers may carry authorized firearms.

(e) Individuals may possess firearms in and around their homes for protection, and for hunting; provided that the firearms are not used in an unlawful and threatening manner.

Section 509. Dangerous Devices (a)

It shall be unlawful to:

(1) Deliver or cause to be delivered to any express, railway company or common carrier, or place in the mail or deliver to any person, or throw or place on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or

(2) Knowingly construct or contrive any dangerous device, or with the intent to injure another in his person or property, have a dangerous device in one's possession.

(b) For purposes of this section, a "dangerous device" is any box, package, contrivance, bond, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

(c) Dangerous devices shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or both.

Sections 510-515. Reserved

Section 516. Desecration

(a) It shall be unlawful to purposely desecrate any public monument or structure; or to purposely desecrate a place of worship or burial, or other sacred place.

(b) Desecrate means to deface, damage, pollute, destroy, take or otherwise physically mistreat in a way that the actor knows, or believes will outrage, the sensibilities of persons likely to observe or discover his action.

(c) Desecration shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the tribal jail not to exceed three months, or both.

Section 517. Littering

(a) It shall be unlawful to throw, dump, place or deposit upon the lands of another or any Tribal or public property, or highway, street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which could mar the appearance or detract from the cleanliness of the area, or to store, keep or allow to accumulate an unreasonable number of any wrecked, junked or unserviceable vehicles, appliances or implements unless one has a permit from the Tribe to maintain a junkyard.

(b) Littering shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or by a term of imprisonment in the Tribal jail not to exceed three months or both.

Sections 518 - 525. ReservedSection 526. Abusing a Corpse

(a) It shall be unlawful to purposely remove conceal, dissect, or destroy a corpse or any part of a corpse or to disinter a corpse that has been buried or otherwise interred.

(b) Abusing a corpse shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or banishment for a term of not less than one year nor more than five years or any combination of the above punishments.

Section 527. Prostitution

(a) It shall be unlawful to:

(1) Be an inmate or resident of a house of prostitution or otherwise engage in sexual activity as a business or for hire; or

(2) Loiter in or within view of a public place for the purpose of being hired to engage in sexual activity; or

(3) Engage in or offer or agree to engage in any sexual activity with another person for a fee; or

(4) Pay or offer or agree to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(5) Enter or remain in a house of prostitution for the purpose of engaging in sexual activity; or

(6) Own, control, manage, supervise, or otherwise keep, alone or in association with another, a house of prostitution or a prostitution business; or

(7) Solicit a person to patronize a prostitute; or

(8) Procure or attempt to procure a prostitute for another; or

(9) Lease or otherwise permit a place controlled by the actor, alone or in association with others, to be used for prostitution or the promotion of prostitution; or

(10) Procure an inmate for a house of prostitution; or

(11) Encourage, induce, or otherwise purposely cause another to become or remain a prostitute; or

(12) Transport a person with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with the purpose; or

(13) Share in the proceeds of a prostitute pursuant to an understanding that one is to share therein, unless one is the child or legal dependent of a prostitute; or

(14) Own, operate, manage or control a house of prostitution; or

(15) Solicit, receive, or agree to receive any benefit for doing any of the acts prohibit by this subsection.

(b) Definitions:

(1) "Sexual activity" means intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

(2) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(3) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(4) "Public place" means any place to which the public or a substantial group there has access.

(c) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: Its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove offense under this section.

(d) Prostitution shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or both. Upon a second or subsequent conviction for prostitution, banishment may also be imposed for a term not to exceed two years.

Section 528. Spreading Venereal Disease.

(a) It shall be unlawful to infect another person with venereal disease, if one knows or has reason to believe she/he is infected with a venereal disease.

(b) The court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

(c) Spreading venereal disease shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 529. Obscenity

(a) It shall be unlawful to:

(1) Sell, deliver or provide, or offer or agree to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or

(2) Present or direct an obscene play, dance, or performance, or participate in that portion thereof which makes it obscene; or

(3) Publish, exhibit or otherwise make available any obscene material; or

(4) Possess any obscene material for purposes of sale or other commercial dissemination; or

(5) Sell, advertise or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that it is obscene.

(b) Material is obscene if, considered as a whole:

(1) It lacks serious literary, artistic, political, or scientific value; and

(2) It depicts or describes nudity, sex or excretion in patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matters; and

(3) If the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.

(c) A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.

(d) Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or some other specially susceptible audience.

(e) Undeveloped photographs molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(f) It shall be a defense to a prosecution under this section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.

(g) Obscenity shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) and all obscene material shall be confiscated and destroyed.

Section 530-535. Reserved

Section 536. Intoxication

(a) It shall be unlawful to be under the influence of an intoxicating-beverage, drugs, or other controlled substance, or a substance having the property of releasing vapors, to any degree, in a public place or in a private place where one unreasonably disturbs another person, under circumstances not amounting to disorderly conduct.

(c) Intoxication shall be punishable by a fine not to exceed One Hundred Fifty Dollars (\$150.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both. However, a judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release. The Judge may also commit the person convicted to a facility for treatment if it appears that the person is dependent upon the intoxicating beverage, drugs, controlled substance, or vapor producing substance, for a period not to exceed six months.

Section 537. Possession Of An Alcoholic Beverage –
RESERVED (Resolution #07-19)

Section 538. Tobacco Offense (a)

It shall be unlawful to:

(1) Purchase, obtain, possess, smoke, chew, inhale or ingest any product made from or with tobacco if under the age of eighteen years; or

(2) Sell to, or otherwise obtain for or arrange for the obtaining of tobacco or a tobacco product for a person under the age of eighteen, or to knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.

(b) Tobacco offenses shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 539. Abuse Of Psychotoxic Chemical Solvents

(a) It shall be unlawful to purposely smell or inhale the fumes of any psychotoxic chemical solvent, or to possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, with the intention of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or to sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute any psychotoxic chemical solvent knowing or believing that the purchaser or another intends to use the solvent in violation of this Section.

(b) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvent" includes any glue, cement, or other substance containing one or more of the following chemicals compounds: acetone and acetate, benzene, butyl-alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packages in a container by the manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

(d) Abuse of psychotoxic Chemical Solvents shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both, and the Court may order any person using psychotoxic chemical solvents for inhalation to be committed to some facility for treatment for a term not exceeding six months.

(e) Such psychotoxic chemical solvents kept or used in violation of this Section are hereby declared to be contraband and civil proceedings may be had against such psychotoxic chemical solvents as provided by law.

Section 540. Dangerous Drug Offense

(a) It shall be unlawful, except as authorized and controlled by Federal law, to manufacture, distribute, possess with intent to distribute, dispense, create, possess, or cultivate a controlled or a counterfeit substance; or to obtain or acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or to knowingly or intentionally use any communication facility in committing any of the above prohibited acts.

(b) Controlled or counterfeit substances shall consist of the substances listed in 21 U.S.C. §812 (1972), and any other chemical substance, natural or artificial, defined as a controlled or dangerous substance the possession, sale, distribution, or use of which is prohibited by federal law, except peyote.

(c) A dangerous drug offense shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or both. Upon conviction under this section for sales distribution, possession with intent to distribute, manufacturer with intent to sell, or cultivation with intent to distribute, banishment may also be imposed for a term not to exceed ten year's.

(d) Any substance handled in violation of this section is hereby declared to be contraband and civil forfeiture proceedings may be had against such substance as provide by law.

(e) Any personal property used to transport, conceal manufacture, cultivate, or distribute to controlled dangerous substance in violation of this section shall be subject to forfeiture as contraband by civil proceeding as provided by law.

(f) Section 541-550. Reserved

Section 551. Cruelty To Animals

(a) It shall be unlawful to purposely or knowingly:

- (1) Torture or seriously overwork an animal; or
 - (2) Fail to provide necessary food, care, or shelter for an animal in one's custody; or
 - (3) Abandon an animal in one's custody, or
 - (4) Transport or confine an animal in a cruel manner;
- or
- (5) Kill, injure, or administer poison to an animal without legal privilege to do so; or
 - (6) Cause one mammal to fight with another.

(b) Cruelty to animals shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both. It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary practice or directly related to a bona fide experimentation for scientific research provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

Section 552. Livestock Offense

(a) It shall be unlawful to:

- (1) Knowingly or recklessly refuse or fail to mark or band his livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or
- (2) Alter, obliterate, or remove a brand or mark, or misbrand or mismark livestock with a purpose to deceive another for any reason; or

(3) Knowingly permit livestock to graze or trespass on the property of another or of the Tribe without permission to do so in excess of permitted time or amount; or

(4) Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock; or

(5) Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

(6) Fail to dip, inoculate or otherwise treat livestock in the manner which the designated representative of the Tribe shall direct; or

(7) Make a false report of livestock owned.

(b) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found, for subsections 1, 3, 4, 5, or 6 set forth above no conviction may be sustained unless the owner or person having custody of the livestock involved is given forty-eight hours written notice of his alleged violation. -

(c) Livestock found to be in violation of this section may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals maybe collected prior to their release.

(d) A livestock offense shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

(e) Livestock handled or kept in violation of this section are hereby declared to be contraband and civil proceedings may be had against such animals for forfeiture as provided by laws.

Section 553-560. Reserved

Section 561. False Reports

(a) It shall be unlawful to initiate or circulate a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report of warning is false or baseless and that it is likely to cause evacuation of any building, place or assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies.

(b) False reports shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed months, or both.

Section 562. Emergency Telephone Abuse

(a) It shall be unlawful to knowingly refuse to yield or surrender the use of a party line or public pay telephone to another person upon being informed that said telephone is needed to report a fire, or summon police, medical or other aide in case of an emergency, unless the actor is already using said telephone to report an emergency; or to ask for or request the use of a party line or public pay phone on the pretext that an emergency exists, knowing that no emergency exists.

(b) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or reasonable appears to be essential to preservation of human, life, safety, or property.

(c) Emergency telephone abuse shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 563. Violation Of Privacy

(a) It shall be unlawful, except as authorized by law, to:

(1) Trespass on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Install in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or use any such unauthorized installation; or

(3) Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(4) Divulge without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(c) Definitions:

(1) "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device.

(2) "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

(c) Violation of privacy shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both,

Section 564. Criminal Defamation

(a) It shall be unlawful to knowingly and with malicious intent communicate to any person orally or in writing any information which one knows or should know to be false and knowingly that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects

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of one who is alive, or who has not been declared missing or dead for a period exceeding twenty years, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if not justifiable motive for making it is shown by way of defense.

(b) Criminal defamation shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both. However, it shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public news media of communication and in good faith believed he was reporting a newsworthy event concerning a public figure with a basis in truth.

Section 565 Gambling – RESERVED (Resolution #07-19)

Section 566. Waters Offense

(a) It shall be unlawful

to:

(1) Interfere with or alter the flow of water in any stream, river, or ditch, without lawful authority to do so, or a permit from the Tribe, and in violation of the right of any other person; or

(2) Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure to direct the flow of water, without lawful authority to do so; or

(3) Pollute or befoul any water in any of the following ways:

(i) construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or

(ii) deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purpose; or

(iii) construct, establish, or maintain any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water; or

(iv) knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

(b) A water offense shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 567. Contributing To The Delinquency Of A Minor

(a) It shall be unlawful for a person eighteen years of age to older to:

(1) Knowingly or recklessly sell or give to or otherwise make beer, liquor, wine or other alcoholic beverages available to a person under the age of eighteen years, or

(2) Knowingly or recklessly, by act or omission, encourage, cause or contribute to the delinquency or unlawful conduct of a minor under eighteen years of age.

(b) Contributing to the delinquency of a minor shall be punishable by a fine of not more than Two Hundred Fifty Dollars (\$250.00), or by a term or imprisonment in the Tribal jail not to exceed three months, or both.

Section 568. Trafficking In Children

(a) It shall be unlawful to:

(1) Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or

(2) Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption for permanent care in a foster home; or

(3) Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child.

(b) "Child" means an unmarried or unemancipated person under the age of eighteen years.

(c) This section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fees for legal services actually rendered in the course of lawful adoption proceedings, nor shall subparagraphs (a) (1) or (a) (2) apply to any bona fide social worker or government employee receiving their normal salary and making such placements as a part of their official duties.

(d) Trafficking in children shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 569. Curfew Violation

(a) It shall be unlawful for a parent, guardian or other person having physical charge of a minor to allow said minor under the age of eighteen to be away from his place of residence in a public place, or a private place other than the place where he intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of eleven o'clock p.m. local time, unless accompanied by a parent, guardian, or other person having physical charge of said minor or in attendance at or returning directly home from an organized school, church or Tribal or public function.

(b) A curfew violation shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 570. Fireworks Offense

(a) It shall be unlawful to possess, buy, sell distribute, transport, activate, ignite, or detonate or to allow any minor under one's physical or actual care, custody, or control to possess, buy, sell distribute, transport, activate, ignite, or detonate any firecracker or other fireworks type device which is capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.

(b) It shall not be an offense under this section:

(1) To use or ignite hand-held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or

(2) To use or ignite fireworks at a patriotic, religious, or tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribe or a lawfully authorized Tribal agency prior to the importation and use of such fireworks.

(3) To buy, possess, use, or ignite fireworks between June 15 and July 10 inclusive of each year, provided that such devices are handled safely with regard to the safety of others and their property, and providing further, that minors under the age of twelve buying, possessing, using, or igniting fireworks must be under the actual direct physical supervision of some responsible adult over twenty-one years of age for this exception to apply.

(4) To possess or sell fireworks between June 15 and July 10 inclusive of each year provided that a permit to do so has been obtained from the Tribe or a lawfully authorized Tribal agency prior to such possession and sale, provided further, that upon proof of a secure and safe facility, such permit may state a particular location for year round storage of fireworks by a business engaged in retail or wholesale of fireworks.

(c) A fireworks offense shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

CHAPTER SIX

TRAFFIC OFFENSES

Section 601. Definitions

(a) The term "motor vehicle" shall mean every device in, upon, or by which any person or property is or may be drawn or transported upon a public road and which device is self-propelled, but not including any vehicle which is an implement of husbandry and is designed principally for agricultural purposes, nor any mechanical device designed or used principally for construction or maintenance purposes excepting trucks.

(b) A "Public Road" shall be defined as the entire width between the boundary lines of every right of way within the exterior boundaries of the Tribal jurisdiction which is maintained by any governmental agency, and, when open to the use of the public, is for the purpose of travel by motor vehicles.

Section 602. Driving While License Is Suspended Or Revoked

(a) It shall be unlawful to drive any motor vehicle upon any public road at a time one's driver's license or permit or other driving privilege has been denied, suspended, canceled or revoked by any State or Indian Tribe, or when one's driving privilege has been suspended by the Tribal Court.

(b) Driving while license is suspended or revoked is punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or by supervision or revocation of one's driver's license, or any combination of the above punishments.

Section 603. Careless Driving

(a) It shall be unlawful to operate any motor vehicle upon any public road in a careless or imprudent manner, without due regard for the width, grade, curves, corner, traffic, or existing weather conditions, and the use being made of such road or other attendant circumstances.

(b) Careless driving shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 604. Reckless Driving

(a) It shall be unlawful to drive any motor vehicle upon any public road within the Tribal jurisdiction in such a manner as to indicate either a wanton or willful disregard for the safety of person or property.

(b) Reckless driving shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or by suspension of driving privileges for a period not to exceed one year or any combination of the above punishments.

Section 605. Driving While Intoxicated

(a) It shall be unlawful to drive or be in actual physical control of any motor vehicle upon any private or public road within the Tribal jurisdiction while under the influence of intoxicating liquor, or controlled dangerous substances, or any other drugs which impair the ability to control or operate a vehicle.

(b) A person is presumed to be under the influence of intoxicating liquor if there is 0.1% or more of alcohol in the blood by weight, and a person is presumed not to be under the influence if there is less than 0.05% of alcohol in their blood, by weight. Between such percentages, results of tests showing such fact may be received in evidence, with other tests or observations, for consideration by the

Court or jury. A breath or blood tests must be administered with the consent of the subject, by a qualified operator using a properly maintained apparatus in order to be admissible, provided, that if any person refuses to take such test when requested to do so by an Officer having a reasonable suspicion that such person may be intoxicated, the persons driving privileges within the Tribal jurisdiction shall be suspended by the Court for a period of six months whether or not such person is convicted of any offense. Such suspension is mandatory.

(c) Driving under the influence shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months, or by suspension of driving privileges for a period not to exceed two years or any combination of the above punishments. For a second or subsequent conviction under this section, or a violation resulting in serious injury, a term of banishment may be imposed for a period not less than one year nor more than five years, in addition to the above authorized punishments.

Section 606. Duties Of Drivers Involved In Accidents Involving Deaths Or Personal Injuries

(a) It shall be unlawful for the driver of any motor vehicle directly involved in an accident resulting in injury to or death of any person or damage to any other moving or attended vehicle to fail to immediately stop his vehicle at the scene of the accident or as close thereto as possible; or fail to return to and remain at the scene of the accident and render such aid and assistance as may be necessary in the circumstances; or fail to give his name, address and the registration number of his motor vehicle and his operator's or chauffeur's license number and security verification information to all other drivers involved in the accident; or to fail to render to any injured person such assistance as may be necessary in the circumstances; or to fail to notify, or have another notify, the Tribal Police of the accident and its location as soon as possible.

(b) Failure to perform the duties of drivers involved in accidents involving deaths or personal injuries shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term

of imprisonment in the Tribal jail not to exceed six months, or by suspension of driving privileges for a period not to exceed one year.

Section 607. Duty Upon Striking Unattended Vehicle

(a) It shall be unlawful for the driver of any motor vehicle which collides with any unattended vehicle to fail to immediately stop and attempt to locate and notify the operator or owner of such vehicle of both the name and address of the driver and owner of the vehicle striking the unattended vehicle; or to fail to leave securely attended in a place where it may be easily seen in the vehicle struck, a written notice giving the name and address of the driver and the circumstances thereof; or to fail to inform the Tribal Police of the accident and its location as soon as possible.

(b) Failure to perform the duty of a driver upon striking an unattended vehicle shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or by suspension of driving privileges for a period not to exceed one year.

Section 608. Duty Upon Striking Highway Fixtures

(a) It shall be unlawful for the driver of any motor vehicle involved in an accident result only in damage to fixtures legally upon or adjacent to a highway to fail to take reasonable steps to locate and notify the owner or person in charge of such property of such fact and his name and address and of the registered number of the vehicle he is driving; or to fail to report such accident to the Tribal police as soon as possible.

(b) Failure to perform the duty of a driver upon striking highway fixtures shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 609. When Driver Unable To Report

(a) It shall be unlawful for another occupant in the vehicle at the time of an accident who is capable of making the report to fail to do so when the driver of the motor vehicle is physically unable to make a required accident report to the Tribal Police.

(b) Failure to make such a report shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 610. Driver's License In Possession

(a) It shall be unlawful to operate a motor vehicle upon any private or public road within the Tribal jurisdiction without possession of a valid Federal, Tribal, or State operator's license, chauffeur's license, or permit, which must be exhibited upon demand by an authorized person.

(b) Failure to have a driver's license in possession shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 611. Permitting Unauthorized Person To Drive

(a) It shall be unlawful to knowingly cause or permit any unauthorized person to operate a motor vehicle upon any public road.

(b) Permitting an unauthorized person to drive shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 612. Traffic Control And Signal Devices

(a) It shall be unlawful to turn a vehicle from a direct course on a public road until such movement can be made with safety, and then only after giving an appropriate signal, either by hand or arm or by a directional signal device.

(b) Failure to properly signal shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

(c) It shall be unlawful to disobey the lawful command or instruction of any law enforcement officer. Failure to obey a lawful command shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 613. Following Too Closely

(a) It shall be unlawful to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon the condition of the highway.

(b) Following too closely shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 614. Stopping For School Bus

(a) It shall be unlawful, when meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging passengers, to fail to stop immediately and not proceed again until all passengers are received or discharged and the bus is again in motion.

(b) Failure to stop for a school bus shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 615. Entering Public Road From Private Road

(a) It shall be unlawful for the driver of a motor vehicle about to enter or pass a public road from a private road or driveway to fail to yield the right of way to all vehicles approaching on said public road.

(b) Failure to yield the right of way when entering a public road from a private road shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 616. Right Of Way At Intersection

(a) It shall be unlawful for the driver of a motor vehicle approaching an intersection to fail to yield the right of way to any vehicle approaching from the right, unless otherwise directed by sign, traffic light, or a proper official directing traffic.

(b) Failure to yield the right of way at an intersection shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 617. Failure To Stop At Stop Sign And Yielding Right Of Way

(a) It shall be unlawful for the driver of a motor vehicle to fail to come to a complete stop at all intersections marked by a stop sign before entering an intersection, unless otherwise directed by an officer directing traffic.

(b) It shall be unlawful for the driver of a motor vehicle approaching an intersection marked by a sign requiring him to yield the right of way to fail to decrease the speed of such vehicle and yield and yield the right of way to any traffic proceeding on the road given the right of way by such sign.

(c) Failure to stop at stop sign or to yield the right of way shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 618. Driving On Right Side

(a) It shall be unlawful to fail to drive on the right half of the roadway, except when overtaking and passing another vehicle proceeding in the same direction.

(b) Failure to drive on the right side shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 619. Passing Oncoming Vehicles

(a) It shall be unlawful for drivers proceeding in opposite directions to fail to pass each other to the right and to give to the other at least half of the main traveled portion of the roadway.

(b) Improper passing of oncoming vehicles shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 620. Passing And Turning On Curve Or Crest

(a) It shall be unlawful to pass a vehicle going in the same direction unless the driver can see the road for a sufficient distance ahead to pass safely and such passing can be accomplished safely without colliding with oncoming traffic.

(b) It shall be unlawful for a vehicle to be driven so as to pass to turn in any direction on a curve or crest or on any approach to a crest or on a bridge on any approach to a bridge unless such vehicle can pass or be turned safely and seen by traffic approaching in either direction.

(c) Improper passing or turning on a curve or crest shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 621. Unsafe Vehicles

(a) It shall be unlawful for any person to drive or cause or knowingly permit to be driven on any public road any motor vehicle which is in such unsafe condition so as to endanger any person or is not at all times equipped with the following:

(1) HEADLIGHTS: One on each side of the front of the motor vehicle, said lights to be multibeam so that the driver can adjust lights from bright to dim, and such lights must be in

proper working order at all times so as to be seen by oncoming traffic for a reasonable distance during hours of darkness or other times when light conditions require the use of headlights.

(2) REAR LAMPS: One lighted red lamp on each side of the back of the motor vehicle that will be plainly visible for a reasonable distance to the rear, and such lamp must be in proper working order at all times.

(3) STOP LIGHTS: All motor vehicles shall be equipped with a stop light in good working order at all times, such stop lights to be automatically controlled by brake adjustment.

(4) BRAKES: Every motor vehicle shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.

(5) HANDBRAKE: Every motor vehicle shall be equipped with a handbrake.

(6) HORN: Every motor vehicle shall be equipped with a horn in good working order.

(7) WINDOWS UNOBSTRUCTED - WIPERS: No person shall drive any motor vehicle with any sign or other non transparent material upon the windshield, side wings, side or rear windows of such vehicle that would obstruct the driver's view, other than a paper or certificate required to be so displayed by law. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other. obstructions from the windshield and must be in proper working order at all times.

(8) LICENSE TAG LIGHT: All motor vehicles shall be equipped with a rear tag light in good working order at all times.

(9) PROOF OF VEHICLE INSPECTION TO BE DISPLAYED: All motor vehicles shall display a valid state motor vehicle inspection decal.

(b) Violation of this section is punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 622. Speed Limits

(a) Speed limits on any public road shall be set by the Tribal Police Chief. Speed limits may be posted at such places and at such maximum allowable speeds as deemed necessary by the Chief of the Tribal Police.

(b) In any area of the Tribal jurisdiction where the speed limit is not posted and where no special hazard exists, the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(1) School Zones, grounds, and crossings, designated areas - 20 MPH

(2) Residential areas - 30 MPH

(3) Open highway - 55 MPH

It shall be unlawful to exceed the above limits, the limits posted by authority of the Chief of the Tribal Police, or a speed which is reasonable and proper under the conditions prevailing upon the roadway.

(c) The fact that the speed of a motor vehicle is lower than the foregoing prima facie limits does not relieve the driver from the duty of all persons to use due care.

(d) Exceeding the speed limit or operating a motor vehicle at a speed which is not reasonable and proper shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00);

Section 623. When Lights Are Required To Be On

(a) It shall be unlawful for a vehicle to be on a public roadway at any time from a half hour after sunset to a half hour before sunrise or at any other time when objects on the road cannot be seen clearly at a distance of five hundred feet because of light conditions without displaying lighted lamps on the vehicle.

(b) Every vehicle stopped or parked on the side of any road or highway during the hours set forth above, shall burn lamps, flares, or otherwise alert other drivers of the potential danger, unless the vehicle is positioned at least thirty inches from the main traveled portion of the roadway in such fashion that no part of the main traveled portion of the roadway, nor the thirty inch safety zone is impeded.

(c) Violation of this section shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 624. Pedestrians

(a) It shall be unlawful for a pedestrian crossing a roadway at any point other than a marked crosswalk or within an unmarked crosswalk at an intersection to fail to yield the right of way to all motor vehicles on the roadway.

(b) Notwithstanding the provisions of Subsection (a) herein, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian on any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any person upon public road.

(c) Violation of this section shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 625. Throwing Trash On Roads And Roadways

(a) It shall be unlawful to discard trash or refuse of any type on a roadway or public highway or right-of-way within the Tribal jurisdiction.

(b) Throwing trash on roads and roadways shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 626. Illegal Parking

(a) It shall be unlawful to stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of a public roadway when it is practical to stop, park, or leave such vehicle off such part of said roadway, but in every event a clear and unobstructed width of at least twenty feet of such part of the roadway opposite such standing vehicle shall be left for the free passage of other vehicles, a clear view of such stopped vehicle shall be available from distance of two hundred feet in each direction upon said roadway, and the vehicle must be positioned at least thirty inches outside the main traveled portion of the roadway.

(b) This Section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position, provided that reasonable provision is made by the driver thereof for the warning and safety of other vehicles traveling upon such roadway until the vehicle can be removed.

(c) It shall be unlawful to stop, park, or leave standing a vehicle except when necessary to avoid collision with other traffic or in compliance with the directions of a police officer or traffic control sign, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;

- (3) Within an intersection;
- (4) Within twenty-five feet (25) of a fire hydrant;
- (5) On a crosswalk.

(d) A violation of this Section shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

Section 627. Seat Belts

(a). It shall be unlawful for any operator or passenger of a motor vehicle, operated on a public road within this jurisdiction, to fail or refuse to wear a properly adjusted and fastened safety seat belt system, if so provided, required and installed in the motor vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard 208. Provided, it shall be the duty of the operator of the motor vehicle to require all passengers to wear the seat belt system.

(1) For the purposes of this section, "motor vehicle" shall be defined in Section 601(a) of this Title, excepting trucks, truck-tractors, recreational vehicles, motorcycles, motorized bicycles.

(2) For the purposes of this section, "Public road" shall be defined in section 601(b) of this Title.

(3) For the purposes of this section, a seat belt system shall mean a seat belt, lap belt, shoulder harness, any combination thereof including "car seats" or any device primarily intended for the use of restraining infants and children.

(b). This section shall not apply to an operator or passenger of a motor vehicle in which the operator or passenger possesses a written verification from a physician duly licensed in this or any other state that he is unable to wear a safety seat belt system for medical reasons. Provided, the issuance of such verification by a physician, in good faith, shall not give rise to, nor shall such physician thereby incur any liability whatsoever in damages or

otherwise to any person injured by reason of such failure to wear a safety belt system.

(c). This section shall not apply to an operator of a motor vehicle who is a route carrier of the U.S. Postal Service.

(d). No law enforcement officer shall make routine stops of motorists for the purpose of enforcing this section but may enforce this section while enforcing any other section of this Title.

(e). Failure to use a seat belt system required by this Section is punishable by a fine of Twenty Five Dollars (\$25.00) for each violation

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CHAPTER SEVEN

DOMESTIC ABUSE ACT

Section 1. Definitions

(a) As used in this Act:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;
2. "Stalking" means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:
 - a. Following or appearing within the sight of that individual,
 - b. Approaching or confronting that individual in a public place or on private property,

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- c. Appearing at the workplace or residence of that individual,
 - d. Entering onto or remaining on property owned, leased, or occupied by that individual,
 - e. Contacting that individual by telephone,
 - f. Sending mail or electronic communications to that individual, or
 - g. Placing an object on, or delivering an object to, property owned, leased or occupied by that individual;
- 3. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in and fear of death or bodily injury;
- 4. "Family or household members" means:
 - a. Spouses,
 - b. Ex-spouses,
 - c. Present spouses of ex-spouses,
 - d. Parents, including grandparents, stepparents, adoptive parents and foster parents,
 - e. Children, including grandchildren, stepchildren, adopted children and foster children,
 - f. Persons otherwise related by blood or marriage,
 - g. Persons living in the same household or who formerly lived in the same household, and

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- h. Persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped;
- 5. "Dating relationship" means a courtship or engagement relationship. For purposes of this Act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;
- 6. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;
- 7. "Rape" means rape and rape by instrumentation in violation of the Pawnee Nation Code;
- 8. "Victim support person" means a person affiliated with a certified domestic violence or sexual assault program, certified by the Attorney General or certified by a recognized Native American Tribe if operating mainly within tribal lands, who provides support and assistance for a person who files a petition under this Act; and
- 9. "Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiffs petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition.

Section 2. Protective Order Petition. Form and Filing Fee;

- (a) A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of this Act.
 - 1. The person seeking relief may file a petition for a protective order, also known as a victim protective order (VPO) with the Pawnee Nation trial court if the victim or the defendant reside within the jurisdiction of the

Pawnee Nation. If the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the Pawnee Nation trial court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph 2 of subsection (C) of this section. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the Pawnee Nation territorial jurisdiction. If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order where the action for divorce or separate maintenance is filed, the petition for the protective order may be heard by the court hearing the divorce or separate maintenance action if:

- a. There is no established protective order docket in such court, or
- b. The court finds that, in the interest of judicial economy, both actions may be heard together; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

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2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as authorized by this Act.
- (b) The petition forms shall be provided by the clerk of the court. The Administrative Office of the Courts shall develop a standard form for the petition.
- (c) Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted.
1. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.
 2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.
- (d) The person seeking relief shall prepare the petition or, at the request of the plaintiff, the court clerk or the victim-witness coordinator, victim support person, and court case manager shall assist the plaintiff in preparing the petition.
- (e) The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

Section 3. Emergency Ex Parte Order

- (a) If a plaintiff requests an emergency ex parte order pursuant to this Act, the court shall hold an ex parte hearing on the same

day the petition is filed, if the court finds sufficient grounds within the scope of this Act stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order.

The Administrative Office of the Courts shall develop a standard form for emergency ex parte protective orders.

- (b) An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.
- (c) If a plaintiff requests an emergency temporary ex parte order of protection, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

Section 4. Hearing; Service of Process; and Period of Relief

- (a) A copy of a petition for a protective order, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. Any fee for service of a petition for

protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection (C) of Section 2 of this Act and, if charged, shall be the same as the officer's service fee plus mileage expenses.

1. Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made upon the defendant by a police officer, the police officer may contact another law enforcement officer or a private investigator or private process server to serve the defendant.
 2. An emergency ex parte order, a petition for protective order, and a notice of hearing shall have validity throughout the territorial jurisdiction of the Pawnee Nation, and may be transferred to any law enforcement jurisdiction to effect service upon the defendant.
 3. The return of service shall be submitted by the police department in the court where the petition, notice of hearing or order was issued.
 4. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken.
- (b) Within twenty (20) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of this Act stated in the petition to hold such a hearing, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

1. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse.
 2. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.
 3. A petition for a protective order shall, upon the request of the petitioner, renew every twenty (20) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time, however, a protective order must be dismissed by court order.
 4. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.
- (c) At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim and may order the defendant to obtain domestic abuse counseling or treatment in a program at the expense of the defendant.
1. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action against a juvenile defendant.
- (d) Final protective orders authorized by this section shall be on a standard form developed by the Administrative Office of the Courts.
- (e) After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim.

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1. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.
- (f) When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a police officer, or other officer whose duty it is to preserve the peace.
- (g) Any protective order issued pursuant to this section shall be for a fixed period not to exceed a period of three (3) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the three-year time limitation.
1. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.
 2. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.
 3. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence unless, upon further consideration by the court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.
- (h) It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to this Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.
1. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

(i) A protective order issued under this Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support or division of property or any other like relief, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

1. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

(j) A court shall not issue any mutual protective orders.

1. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately; in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.
2. The court may only consolidate a hearing if:
 - a. the court makes specific findings that:
 - (1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and
 - (2) each party acted primarily as aggressors, and
 - b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

- c. the defendant had no less than forty-eight (48) hours notice prior to the full hearing on the petition filed by the plaintiff.
- (k) The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

Section 5. Police to be Sent a Copy

- (a) Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within twenty-four (24) hours by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.
- (b) Any law enforcement agency receiving copies of the documents listed in subsection (A) of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the ex parte or final protective order in the National Crime Information Center database.

Section 6. Violations and Penalties

- (a) Except as otherwise provided by this section, any person who has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or by both such fine and imprisonment; and
- (b) Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a

term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

1. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.
- (c) The minimum sentence of imprisonment issued pursuant to the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.
- (d) In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:
1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph (2) of this subsection;
 2. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.
 - a. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the

treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.
 - a. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the court and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs (4) and (5) of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;
 5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to this Act and subject the defendant to any or all remaining portions of the original sentence;
 6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and
- (e) Ex parte and final protective orders shall include notice of these penalties.
- (f) When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.
- (g) The courts of this Pawnee Nation and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:
1. Attend a treatment program for domestic abusers approved by the court;

2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and
 3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers approved by the court.
- (h) At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.
- (i) In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Section 7. Order Valid Nationwide Unless Modified

All orders issued pursuant to the provisions of this Act shall have statewide and nationwide validity, unless specifically modified or terminated by a judge of the trial court or by order of the Supreme Court.

Section 8. Seizure and Forfeiture of Weapons and Instruments

- (a) Each police officer of the Pawnee Nation shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined in this Act, provided an arrest is made, if possible, at the same time.
- (b) After any such seizure, the Attorney General shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.
- (c) No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection (B) of this section, unless authorized by this

section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner.

Section 9. Warrantless Arrest and Proceedings

- (a) A police officer, without a warrant, may arrest and take into custody a person if the police officer has reasonable cause to believe that:
 - 1. An emergency ex parte or final protective order has been issued and served upon the person, pursuant to the this Act;
 - 2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the police officer as provided in subsection (D) of this section;
 - 3. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
 - 4. The person named in the order has violated the order or is then acting in violation of the order.
- (b) A police officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:
 - 1. The police officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued;
 - 2. A certified copy of the foreign protective order has been presented to the police officer that appears valid on its face; and
 - 3. The police officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.

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- (c) A person arrested pursuant to this section shall be brought before the court within twenty-four (24) hours after arrest to answer to a charge for violation of the order pursuant to this Act, at which time the court shall do each of the following:
 - 1. Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;
 - 2. Set a reasonable bond pending a hearing of the alleged violation of the order; and
 - 3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.
- (d) A copy of a protective order shall be prima facie evidence that such order is valid in the territorial jurisdiction of the Pawnee Nation and the state when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.
- (e) Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or by both such fine and imprisonment and shall, in addition, be liable for any civil damages to the defendant.

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Section 10. Statement Required on all Ex Parte and Final Protective Orders

- (a) In addition to any other provisions required by this Act, or otherwise required by law, each ex parte or final protective order issued shall have a statement printed in bold-faced type or in capital letters containing the following information:
1. The filing or non-filing of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;
 2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;
 3. The order will be in effect for three (3) years unless extended, modified, vacated or rescinded by the court;
 4. A violation of the order is punishable by a fine of up to One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1) year in the county jail, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year in the county jail or a fine of up to Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment; and
 5. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.

Section 11. Foreign Protective Order Valid

- (a) It is the intent of the Pawnee Nation that all foreign protective orders shall have the rebuttable presumption of validity, even if the foreign protective order contains provisions which could not be contained in a protective order issued by a Pawnee Nation court. The validity of a foreign protective order shall

only be determined by a court of competent jurisdiction. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all law enforcement officers and courts of the Pawnee Nation.

- (b) A law enforcement officer of this state shall be immune from liability for enforcing provisions of a foreign protective order.

Section 12. Notice of Victim's Rights

Upon the preliminary investigation of any crime involving domestic abuse, rape, forcible sodomy or stalking, it shall be the duty of the first law enforcement officer who interviews the victim of the domestic abuse, rape, forcible sodomy or stalking to inform the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, rape, forcible sodomy or stalking you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;
3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and
4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."

Section 13. Duties of Police Officer: Emergency Protective Order

- (a) A police officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim.
- (b) A police officer may arrest without a warrant a person anywhere, including a place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by this Act, although the assault did not take place in the presence of the

police officer. A police officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

1. An arrest, when made pursuant to this section, shall be based on an investigation by the peace officer of the circumstances surrounding the incident, past history of violence between the parties, statements of any children present in the residence, and any other relevant factors. A determination by the police officer shall be made pursuant to the investigation as to which party is the dominant aggressor in the situation. A police officer may arrest the dominant aggressor.
- (c) When the court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:
1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by this Act for a petition for protective order;
 2. Immediately notify, by telephone or otherwise, a judge of the trial court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the police officer of the decision to approve or disapprove the emergency temporary order;
 3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection and notify the victim that the emergency temporary order shall be effective only until the close of business on the next day that the court is open for business;
 4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made

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personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to such person; and

6. File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.
- (d) The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those utilized by Administrative Office of the Courts.

Section 14. Orders for the Protection of Victims

- (a) The court shall consider the safety of any and all alleged victims of domestic violence, stalking, harassment, sexual assault, or forcible sodomy where the defendant is alleged to have violated a protective order, committed domestic assault and battery, stalked, sexually assaulted, or forcibly sodomized the alleged victim or victims prior to the release of the alleged defendant from custody on bond. The court, after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order pursuant to this Act. The court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained under this Act. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the court dismissing the protective order.
- (b) In conjunction with any protective order or restraining order authorized by this section, the court may order the defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device for such term as the court deems appropriate. Upon application of the victim, the court may authorize the victim to monitor the location of the defendant. Such monitoring by the victim shall be limited to the ability of the victim to make computer or cellular inquiries to determine if the defendant is within a specified distance of locations, excluding the residence or workplace of the defendant, or to receive a computer- or a cellular-generated signal if the defendant comes within a specified distance of the victim. The court shall conduct an annual review of the monitoring order to determine if such order to monitor the location of the defendant is still necessary. Before the court orders the use of a GPS device, the court shall find that the defendant

has a history that demonstrates an intent to commit violence against the victim, including, but not limited to, prior conviction for an offense under this Act or any other violent offense, or any other evidence that shows by a preponderance of the evidence that the defendant is likely to commit violence against the victim. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Section 15. Expungement of Protective Orders

- (a) Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to this Act in this jurisdiction must be within one of the following categories:
 - 1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;
 - 2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;
 - 3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or
 - 4. The plaintiff or defendant is deceased.
- (b) For purposes of this section:
 - 1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the district attorney;
 - 2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and
 - 3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed.

(c) Any person qualified under subsection (A) of this section may petition the district court of the district in which the protective order pertaining to the person is located for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in the Pawnee Nation, the state or any other tribal or state court for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection (A) of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

1. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the district attorney, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.
2. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the Attorney General or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the district attorney to the Pawnee Nation Supreme Court in accordance with the rules of the Pawnee Nation Supreme Court.
3. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.
4. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are

the subjects of the records, or without petition by the Attorney General or a law enforcement agency in the due course of investigation of a crime.

5. Employers, educational institutions, state and local government agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.
6. The provisions of this section shall apply to all protective order court records existing in the trial court of the Pawnee Nation, before and after the effective date of this section.
7. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court
8. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.
9. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.
10. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.
11. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony.

Section 16. Emergency Protective Orders in Deprived Child Proceedings

In proceedings before the court in which a child is alleged to be deprived, the court, after consideration and to ensure the safety of any child brought into custody of the Pawnee Nation, may issue against the alleged

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perpetrator of abuse an emergency protective order pursuant to this Act at the emergency custody hearing or after a petition has been filed alleging that a child has been physically or sexually abused. The protective order shall remain in effect until the case has been dismissed or until further order of the court. All emergency protective orders issued by the court pursuant to this section shall remain confidential and shall not be open to the general public; provided, however, copies of the emergency protective order shall be provided to any law enforcement agency designated by the court to effect service upon the defendant.

Section 17. Severability Clause

If any provision of this Act or the application of such provision to any person, firm, association, corporation, or circumstance is found to be unenforceable by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of the Act shall continue in full force and effect.

Section 18. Alternate Effective Date

The bill is effective upon signature of the Principal Chief or upon signature of the Speaker of the Pawnee Nation Congress following legislative override.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE VII

JUVENILE PROCEDURE

Prepared By:
Marvin E. Stepson
Attorney at Law
Fairfax, Oklahoma

October 1, 1993

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Section 1. Citation

This Act may be cited as The Juvenile Procedure Act.

Section 2. Purpose

The purposes of this Act are to:

(a) Secure for each child subject to this Act such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Tribe and society in general;

(b) Preserve and strengthen the ties between the child and his Tribe whenever possible;

(c) Preserve and strengthen family ties whenever possible, and to strengthen and improve the home and its environment when necessary;

(d) Remove a child from the custody of his parents and traditional custodians only when his welfare and safety or the protection of the public would otherwise be endangered;

(e) Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Tribe and society in general;

In order to carry out these purposes, the provisions of this Act shall be liberally construed.

Section 3. Definitions

Unless the context otherwise requires, as used in this Act, the term:

(a) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected,

deprived, in-need-of-supervision, or delinquent filed pursuant to this Act are supported by the evidence.

(b) "Adult" means a person eighteen years of age or over; except that any person alleged to have committed a delinquent act before he became eighteen years of age shall be considered a child under this Act for the purpose of adjudication and disposition of the delinquent Act.

(c) "Aunt" means a person who; by blood or marriage, is:

- (1) A female sibling of the biological parents, or
- (2) A female first cousin of the biological parents, or
- (3) A female child of a grandparent, or

(4) Any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection.

(d) "Brother" means:

- (1) Any male sibling, or
- (2) Any other male person, who, by virtue of an adoption either of themselves or of a members of their family pursuant to the laws of any Indian Tribe or state, would hold the relationship of a sibling with the person in question.

(e) "Brother-in-law" means the husband of a sister by blood or marriage.

(f) "Child" means a person under eighteen years of age.

(g) "Child care center" means an institution or facility designed for the care of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

(h) "Child in need of supervision" means and child:

(1) Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or

(2) Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or

(3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.

(i) "Child placement agency" means an agency designed for the care or placement of children of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(j) "Commit" means to transfer legal custody.

(k) "Cousin" means the child of an aunt or uncle.

(1) "Custody" means guardianship of the person.

(m) "Delinquent child" means a child who:

(1) Has violated any federal, Tribal, or state law excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Act, or

(2) Has habitually violated any traffic, hunting, or fishing statutes or ordinances, or lawful order of the Court made under this Act.

(n) "Department" means the Tribal Social Services Department.

(o) "Deprivation of custody" means the transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency, or institution.

(p) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending Court disposition or a Court order for placement or commitment.

(q) "Disposition hearing" means a hearing, held after an adjudicating hearing has bound a child to be deprived, neglected, in need of supervision, or delinquent in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(r) "Family care home" or "foster home" means a facility for the care of not more than ten (10) children in a family type setting, licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(s) "Group care facilities" means places other than family care homes or child care centers providing care for small groups of children.

(t) "Grandparent" means

(1) A biological grandparent.

(2) The brothers and sisters of a biological grandparent, and their spouses.

(3) Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the - terms of subparagraphs (1) or (2) of this subsection.

(u) "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

(1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment, and

(2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child, and

(3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents, and

(4) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution.

(5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Court action.

(v) "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent, or in need of supervision under this title.

(w) "Juvenile Court" or "Court" means the Juvenile Division of the Tribal Court or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or a state Juvenile Court as in appropriate from the context.

(x) "Neglected child" or "dependent child" means a child:

(1) Whose parent, guardian, or legal custodian has subjected him to mistreatment or abuse, or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or

(2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or

(3) Whose environment is injurious to his welfare; or

(4) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well being, whether because of the fault of the parent, guardian, or legal custodian, or because the parent, guardian or legal custodian does not have the ability or resources to provide for the child.

(5) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, due to, or without the fault of his parent, guardian, or legal custodian, or

(6) Whose parent, guardian, or legal custodian has abandoned him without apparent intent to return, or who has placed him informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of six months.

(y) "Nephew" means the male child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

(z) "Niece" means the female child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

(aa) "Parent" means either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action.

(bb) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his own home under the supervision of the Juvenile Court through the Tribal social services department during the period during which treatment is being provided to the family by the Tribal Social Services Department or other agencies designated by the Court.

(cc) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

(dd) "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

(ee) "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.

(ff) "Sister" means

(1) Any female sibling.

(2) Any other female person, who, by virtue of a adoption either of themselves or of a member of their family pursuant to this Act or the laws of any Indian Tribe or state, would have the relationship of a sibling with the person in question.

(gg) "Sister-in-law" means the wife of a brother by blood or marriage.

(hh) "Termination of parental rights" or "termination of the parent-child legal relationship means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated.

(ii) "Traditional custodian" means those relatives of the child other than the parents, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for its support.

(jj) "Transfer proceeding" means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian Tribe or state whenever such transfer is authorized by Tribal, federal, or state law.

(kk) "Tribal Court" shall mean the Tribal District Court.

Section 4. Place of Sitting

The Juvenile Division of the District Court shall maintain offices and in the same place the District Court sits, provided, that The Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of Justice and economy, with the approval of The Chief Judge, may sit anywhere within the territorial limits of the United States.

CHAPTER ONE

GENERAL PROVISIONS

Section 101. Juvenile Court Established

There is hereby created and established within the Tribal Court, a Juvenile Division whose powers and duties are set forth in this Act. Any Judge of the Tribal Court may be assigned to hear cases in the Juvenile Division of the Court by The Chief Judge.

Section 102. jurisdiction

(a) Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:

- (1) Concerning any child in need of supervision.
- (2) Concerning any child who is delinquent, neglected or dependent.
- (3) Concerning any transfer proceeding to or from a court of another sovereign in a children's case.
- (4) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Juvenile Court's jurisdiction.
- (5) For the issuance of orders of support of minor children.
- (6) To determine the parentage of a child and to make an order of support in connection therewith.
- (7) For the adoption of a person of any age.
- (8) For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law.

(9) For the treatment of commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.

(b) The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(c) Nothing in this section shall deprive the Tribal District Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the Tribal Court except that:

(1) If a petition involving the same child is pending in Juvenile Court or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and

(2) The Tribal Court at any time may request the Juvenile Court to make recommendations pertaining to guardianship or legal custody.

(d) Where a custody award has been made in the Tribal District Court in a dissolution of marriage action or another proceeding and the jurisdiction of the Tribal District Court may take jurisdiction in a case involving the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

Section 103. Indian Child Welfare Act Transfers from State Courts

(a) Pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911
(b), any state court may transfer to the Juvenile Court herein any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after the order of transfer is received by the Court Clerk. In making such determination, the Court may consider:

(1) Whether the child or its family will be in need of special services for physical or mental disease or defect which the Tribe and its resources are unable to adequately provide, and

(2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear the Court should decline to accept the transfer until after the adjudication is completed, and

(3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

(c) A Court transferring a case to the Tribe's jurisdiction under subsection (a) of this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Tribal Juvenile Court, which court shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a Tribal Court juvenile division case number as in other cases.

Section 104. Indian Child Welfare Transfers From Tribal Courts

(a) Any Tribal Court may transfer to the Juvenile Court herein any children's case concerning any child who is a member or eligible for membership in the Tribe, or, whose parents or guardian reside within the jurisdiction of the Tribe if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.

(b) The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after an order of transfer is received by the Court Clerk. In making such determination, the Court may consider:

(1) Whether the child or its family will be in need of special services for physically or mental disease or defect which the Tribe and its resources are unable to adequately provide, and

(2) If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed.

(3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

(c) A Tribal Court transferring a case to the Tribe's jurisdiction under subsection (a) of this Section shall transmit all documents and legal and social records, or certified copies thereof, pertaining to the case to the Tribal Juvenile Court, which shall proceed with the case as if a petition had been originally filed or the adjudication originally made in the Tribal Court.

Section 105. Child Welfare Transfers to Tribal or State Courts

(a) The Tribal Juvenile Court, in its discretion, is authorized to transfer any children's case arising within the Tribal jurisdiction, said child not being a member or eligible for membership in the Tribe, to the Court of the Child's Indian Tribe, or if the child is a non-Indian, to the Court of the State where the child is a resident or domiciled, upon the petition of the Tribal district attorney, either parent, a custodian or guardian, the child's tribe, or an appropriate official of the child's state.

(b) In making such transfers the Tribal Court may consider:

- (1) The best interests of the child, and
- (2) Any special needs or mental or physical disease or defects of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs, and
- (3) If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction, and
- (4) Emotional, cultural, and social ties of the child and its family
- (5) The likelihood that the same child and family would return to the Tribal jurisdiction within a reasonable time and come before the Juvenile Court again.

(c) Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

Sections 106-109. Reserved

Section 110. Notice of Legal Rights

(a) At his first appearance before the Court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

(1) Their right to a jury trial upon demand where available.

(2) Their right to be represented by an attorney, at their own expense, at every state of the proceeding.

(3) Their right to see, hear, and cross-examine all witnesses against them.

(4) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them.

(5) In juvenile delinquency proceedings, the right of the child not to be compelled to testify against himself.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent such are available at no fee, shall be appointed by the Court in proceedings wherein the Tribe is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons.

(c) The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(d) If the child and his parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

Section 111. Tribal Attorney General Duties

The tribal attorney general shall represent the Tribe in the interest of the child in all proceedings subject to this Act in which the Tribe is a party. In proceedings subject to this Act in which the Tribe is not a party, the Tribal attorney general, upon request of the

Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian of the child.

Section 112. Jury Trials

(a) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six or the Court on its own motion may order such a jury to try and case:

(1) In adjudicatory hearing concerning an alleged delinquent, neglected, or deprive child, or child in need of supervision, where termination is stated as a possible disposition in the petition.

(2) In determining the parentage of a child under this title.

(b) Unless a jury is demanded, it shall be deemed to be waived.

Section 113-119. Reserved

Section 120. Procedure

(a) The rules of juvenile procedure herein set forth shall apply in all proceedings under ►his title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

(b) In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

(c) The Tribal Court shall have the authority by written Court rule not inconsistent with this Act or the Rules of Civil Procedure and filed of record in the Court Clerk's office and Tribal

Secretary's office to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Title.

Section 121. Hearings

(a) Hearings shall be held before the Court without a jury, except as provided in Section 112, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public, to attend. The Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the parents or guardian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by court.

(b) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the Judge or referee.

(c) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

(d) Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.

(e) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this Act shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection (6) is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a fine or not more than Five Hundred

Dollars (\$500.00), or by imprisonment in the Tribal jail for not more than thirty days, or by both such fine and imprisonment.

Section 122. Social Study and Other Reports

(a) Unless waived by the Court, the Tribal Social Services Department or other agency designated by the Court shall make a social study and report in writing in all children's cases, except:

(1) If the allegations of a petition filed under Section 102 are denied, the study shall not be made until the Court has entered an order of adjudication; and

(2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

(b) For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along other evidence. However, the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

(c) The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

Section 123. Effect of Proceedings

(a) No adjudication or disposition in proceedings under Section 102 shall impose any civil disability upon a child or

disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.

(b) No adjudication, disposition, or evidence given in proceedings brought under this Act shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Act concerning the same child.

Sections 124-129. Reserved

Section 130. Referees - Qualifications - Duties

(a) The Juvenile Court may appoint one or more referees to hear any case or matter under the Court's jurisdiction, except where a jury trial has been requested and in transfer hearings. Referees shall serve at the pleasure of the Court, unless otherwise provided by law.

(b) Referees shall conduct hearings in the manner provided for the hearing of cases by the Court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the referee shall inform the parties that they have the right to a hearing before the juvenile Judge in the first instance and that they may waive that right, but, that by waiving that right, they are bound by the findings and recommendations of the referee, except as provided in subsection (d) of this Section. If a request is made for a hearing before a juvenile Judge in the first instance, the referee shall terminate the hearing and transmit the case to the appointing Judge.

(c) At the conclusion of a hearing, the referee shall:

(1) Transmit promptly to the juvenile Judge all paper relating to the case together with his findings and recommendations in writing;

(2) Advise the parties before him of his findings and recommendations; and

(3) Advise the parties of their right to review of the findings and recommendations by the juvenile Judge.

(d) A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth for grounds relied upon. Such review is not requested, the findings and recommendations of the referee shall become the decree of the Court when confirmed by order of the juvenile Judge. The Judge may, on his motion, order a hearing of any case before a referee.

Sections 131-139. Reserved

Section 140. Inspection of Court Records

(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the transferred, except records to court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.

(b) With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by person conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

(c) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

Section 141. Expungement of Records

(a) Any person who has been adjudicated delinquent or in need of supervision, Who was taken into custody on an allegation of delinquency or need of supervision, or who was the subject of a petition for delinquency or need of supervision later may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may

initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon the filing of a petition for expungement or entering of a court order, the Court shall set a date for a hearing and shall notify the Tribal district attorney and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including all agencies or officials whom known to have relevant files relating to the individuals.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

(1) The subject of the hearing has not been convicted of a felony, an offense, punishable by banishment or of a misdemeanor involving moral turpitude and has not been adjudicated under this title since the termination of the Court's jurisdiction;

(2) No proceeding concerning a felony, an offense punishable by banishment, a misdemeanor involving moral turpitude, or a petition under this title is pending or being instituted against him; and

(3) The rehabilitation of the person has been attained to the satisfaction of the Court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

(g) In any proceedings alleging delinquency or need-of-supervision in which the Court order the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order or expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

Section 142. Law Enforcement Records

(a) The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(1) To the victim in each case when the child is found guilty of a delinquent act;

(2) When the child has escaped from an institution to which he has been committed;

(3) By order of the Court;

(4) When the Court orders the child to be held for criminal proceedings; or

(5) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation.

(6) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show

a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

Section 143. Social Service Department Records

The records of the Social Service Department concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- (a) To the victim in each case when the child is found guilty of a delinquent act;
- (b) When the child has escaped from an institution to which he has been committed;
- (c) By order of the Court;
- (d) When the Court orders the child to be held for criminal proceedings; or
- (e) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation;
- (f) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

Section 144. Identity Confidential

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this article may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in

apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

Section 145-149. Reserved

Section 150. Search Warrants for the Protection of Children

(a) A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the territorial jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.

(b) Such warrant shall be issued only on the condition that the application for the warrant shall:

(1) Be in writing and supported by affidavit sworn to or affirmed before the Court;

(2) Name or describe with particularity the child sought;

(3) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;

(4) State the address or legal description of the place to be searched;

(5) State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.

Section 151. Issuance and Return of Search Warrant

(a) If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with

particularity the child sought and the place to be searched for the child.

(b) The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.

(c) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support

(d) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at such other time, in which case the Court may so direct.

(e) A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

(f) If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility subject to the conditions of Section 210 (c)(d).

(g) The warrant shall be returned to the issuing court, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Tribal district attorney. If the child was not found, such information should be subscribed on the warrant.

Section 152. Expiration of Search Warrant

A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

Sections 153-159. Reserved

Section 160. Exclusion of Certain Statement by Alleged Delinquent

(a) No statements or admissions of a child made as a result of interrogation of the child by a law enforcement concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

(b) Notwithstanding the provisions of subsection (a) of this Section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

Sections 161-189. Reserved

Section 190. Appeals

(a) An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the

name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(b) The Tribe shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

Section 191. Voluntary Foster Care Authorized

In order to provide better treatment for a families problems and to better protect children, the Department is authorized to accept a child for foster care when:

(a) The parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a Judge of a court of competent jurisdiction by the Judge's certificate that the terms and conditions, and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language which was understood.

(b) A consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the authorized person requesting the child's release within forty-eight (48) hours.

CHAPTER TWO

EMERGENCY CUSTODY

Section 201. Taking Children into Custody

(a) A child may be taken into temporary custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:

(1) He has committed an act which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by law:

(2) He is abandoned, lost, or seriously endangered in his surroundings or seriously endanger others and immediate removal appears to be necessary for his protection or the protection of others; or

(3) He has run away or escaped from his parents, guardian, or legal custodian.

(4) He has violated the conditions of probation and he is under the continuing jurisdiction of the Juvenile Court.

(b) A child may be detained temporarily without an order of the Court by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or Tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.

(c) A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a child brought before him for treatment whom he reasonably suspects to be the victim of child abuse. Any person

detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors, that treatment for a condition could not reasonably be delayed for a period long enough to contact a Judge for an emergency medical treatment order, shall create a presumption that the law enforcement officer properly gave his consent to treatment of the child.

(d) In all other cases, a child may be taken into custody only upon an order of the Court.

(e) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

Section 202. Notification of Parents

When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailer in whose physical custody the child is placed.

Section 203. Notification of Court Officers

Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to Section 201(c), and determines not to release said child pursuant to Section 210(b), the officer or other person who took the child to a detention or shelter facility shall notify the Tribal district

attorney, the Tribal Social Services Department, and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Tribal district attorney, the Tribal Social Services Department, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four hours excluding Saturdays, Sundays, and legal holidays.

Sections 204-209. Reserved

Section 210. Release of Detained Child

(a) Except as provided in paragraph (b) of this section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parents, guardian, or legal custodian.

(b) The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(c) If he is not released as provided in subsection (b) of this section, he shall be taken directly to the Court or to the place of detention or shelter approved by the department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Section 201(c) of this Title.

(d) No child shall be detained pursuant to subsection (b) for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.

(e) Notwithstanding the provisions of subsection (d) of this Section, a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, or legal custodian.

Section 211. Special Release Rule for Major Offenses

(a) No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime or offense punishable by banishment if committed by an adult shall be released from such facility if in writing a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the Tribal district attorney, alleging new circumstances concerning the further detention of the child.

(b) When, following a detention hearing as provided for by subsection (a) of this section, the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(c) Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

Section 212. Court Ordered Release

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child, except children being held pursuant to Section 205 of this Title from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

Section 213. Extension of Detention Period

For good cause shown the Court may extend the time period during which a child may be detained without a petition and court order for a period not exceeding five working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four hours.

Section 214-219. Reserved

Section 220. Detention and Shelter

(a) A child who must be taken from his home but does not require physical restriction shall be given temporary care in a shelter facility approved by the Department and designated by the Court or the Tribal or Bureau of Indian Affairs Department of Social Services and shall not be placed in detention.

(b) No child under the age of fourteen and, except upon the order of the Court, no child fourteen years of age or older and under sixteen years of age shall be detained in a jail, lockup, or other place used for confinement of adult offenders or persons charged with crime. The exception shall be used by the Court only if no other suitable place of confinement is available.

(c) A child fourteen years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the Court to be held for criminal proceedings.

(d) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court and Tribal district attorney immediately when a child who is or appears to be under the age eighteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings.

Section 221. Emergency Shelter in Child's Home

(a) Upon application of a Tribal or Bureau of Social Services Department, the Court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Tribal or Bureau of Indian Affairs Department of Social Services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child.

(b) The director of the Tribal or Bureau of Indian Affairs Department of Social Services shall designate in writing the representatives of these departments authorized to perform such duties.

(c) The court order allowing emergency shelter in the child's home may be written or oral, provided, that if consent is given verbally, the Judge shall reduce the consent given to writing twenty-four hours.

Sections 222-229. ReservedSection 230. Court Ordered Medical Treatment

(a) At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

(1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal custody it may authorize such treatment or care if the parents,

guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this Title or pursuant to court order.

(2) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.

(b) After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto, to the agency or person having custody of the child.

Section 231. Court Ordered Commitment for Observation

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten days.

CHAPTER THREE

ADJUDICATION

Section 301. Court Intake

(a) Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the court's jurisdiction, by reason of delinquency, need of supervision, neglect, or deprivation, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Tribal Department, Child Welfare officer, who shall determine whether the interests of the child or of the community require that further action be taken.

(b) If the Child Welfare officer determines that the interests of the child or of the community require that court action be taken, he shall request in writing the tribal attorney general to file a petition and deliver a copy to the entire case file to the attorney general.

(c) If the Child Welfare officer is unable to determine whether the interests of the child or of the Tribe require that court action be taken from information available to him, he may refer the matter to the Tribal or Bureau of Indian Affairs Department of Social Services, a Tribal or Bureau of Indian Affairs law enforcement agency or other agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this Title.

(d) If the Child Welfare officer determines that the interests of the child or of the Tribe do not require court action, the Department may officer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

Section 302. Attorney General Intake

(a) Upon receiving a request to file a petition and the accompanying reports and files from the Child Welfare officer, the attorney general shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Tribal Rules of Evidence to establish the jurisdiction of the Tribal Juvenile Court over the child.

(b) If the attorney general determines that there is not sufficient evidence available to establish the jurisdiction of the tribal juvenile court over the child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the tribal or Bureau of Indian Affairs Social Services Department of Law Enforcement Agency to conduct a further investigation into the matter.

(c) If the attorney general determines that sufficient evidence is available to establish the jurisdiction of the tribal juvenile court over the child, he shall file a petition concerning the child.

Section 303. Diversion by Contract

(a) Prior to the filing of a Petition, either the Child Welfare officer, or the district attorney with the consent of the Child Welfare officer may divert any children's case, except a case subject to Section 211 or Section 306 of this Title from the court process.

(b) Diversion shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition notices, including an agreement to do or refrain from doing certain acts and the Child Welfare officer or attorney general on behalf of the Tribe agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract.

(1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.

(2) The specific treatment programs the parents, guardian, or custodian agree to successfully complete and their duration.

(3) The specific facts which the parents, guardians, or custodian agree to do or to refrain from doing.

(4) The specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs and accepted by the family.

(5) A fixed, limited time for the contract to run not exceeding one year.

(6) That the Tribe will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term of the contract.

(7) That each party has received a copy of the contract.

(d) No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge or the Juvenile Court.

Section 304. Diversion Contract Inadmissible

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence, except, that the parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the parents, guardian, or custodian of any of the facts alleged therein.

Section 305. Diversion by Consent Decree

(a) After filing of a petition, the attorney general with the consent of the Child Welfare officer, may divert any children's case, except a case subject to Section 211 or Section 306 of this Title from the adjudicatory process with the consent of the respondents and the Court by obtaining Consent Decree if:

(1) The Court has informed the child and his parents, guardian, or legal custodian of their rights to:

(i) deny the allegations of the petition and require the Tribe to prove each allegation by admissible evidence.

(ii) confront and cross-examine the witnesses against them and to call witnesses on their own behalf.

(iii) refuse to testify against themselves or each other in delinquency cases.

(iv) a trial by a jury of six persons at the adjudicatory state, where a jury trial is available.

(v) be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel.

(vi) and the Court believed they understand their rights.

(2) Written consent to the decree is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication.

(3) The Tribal or Bureau of Indian Affairs Social Service Department has prepared a treatment plan for the

family to be incorporated into the Consent Decree which distinctly states:

(i) the specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration.

(ii) the specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs and accepted by the family.

(iii) the specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing.

(iv) the person or agency to be vested with custody of the child if the child cannot remain in its own home, the specific provisions of (i), (ii), and (iii) above which must be completed or accomplished for a specific duration before the child is returned to its own home, and the period of supervision of the child in its own home.

(b) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided, that if the family fails to comply with the treatment plan, the Court, on motion of the district attorney shall proceed with the adjudication.

(c) A Consent Decree shall remain in effect for not exceeding one year, provided, that upon notice of hearing the Court may extend the force of the decree for an additional term of one year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if the Decree is complied with.

Section 306. Limitation on Diversions

No child shall be handled by informal adjustments where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve months or has been

handled by informal adjustment for a delinquent act in the preceding twelve months.

Sections 307-309. Reserved

Section 310. Petition Form

The Tribal district attorney shall sign and file all child welfare petitioners alleging a child to be delinquent, in need-of-supervision, or deprived, or neglected. Such petitioners and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

| | | |
|-------------------------|---|---------------|
| The PAWNEE TRIBE |) | |
| In The Interest Of: |) | |
| _____ |) | |
| |) | Case No. JFJ- |
| An Alleged _____ Child, |) | |
| And Concerning _____ |) | |
| _____ |) | |
| _____ |) | |
| Respondent(s). |) | |

Section 311. Petition Contents

(a) The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

(b) All petitions filed alleging the dependency or neglect of a child may include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an

amended petition be filed based upon the new facts and containing the above required statement.

Sections 312-319. Reserved

Section 320. Summons

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

SUMMONS

THE PAWNEE TRIBE to:

, Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging that the above named _____ is a (delinquent) (deprived or neglected) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Tribal District Court, [Address of Court], on the ----- day of _____, 19____, at the hour of _____ o'clock _____.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

Court Clerk

[Seal]

(Return as in other civil cases)

Section 321. When Summons Unnecessary

A summons need not issue or to be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

Section 322. Additional Parties to be Summoned

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

Section 323. Service of Summons

(a) Summons shall be served personally, pursuant to the Tribal rules of civil procedure.

(b) If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(1) When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon-return of the requested. receipt.

(2) When the person to be served has no residence within the Tribe's jurisdiction and his place of residence is not known or when he cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication.

Section 324. Failure to Appear

(a) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

(b) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

(c) When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both.

Sections 325-329. ReservedSection 330. Appointment of Guardian Ad Litem

(a) The Court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to Section 310 of this Chapter when:

(1) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(2) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or

(3) The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

(b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to Section 310 of this Title who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) At the time any child first appears in court, if it is determined that he has no guardian of his person, the Court shall appoint a guardian of the person of the child before proceeding with the matter.

(d) In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

(e) All guardian ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

Sections 331-339. Reserved

Section 340. Adjudicatory Hearing

(a) At the adjudicatory hearing, which shall be conducted as provided in the rules of civil procedure, except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt on cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(b) When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may

proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(c) In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(d) If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

Section 341. Mentally Ill and Developmentally Disabled Children

(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

(b) A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.

(c) If the report of the examination made pursuant to subsection (a) of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(d) The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(e) The Court shall set a time for resuming the hearing on the original petition when

(1) The report of the examination made pursuant to subsection (a) of this Section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

(2) The child is found not to be mentally

(3) The report of the examination made pursuant to subsection (a) of this Section states that the child is developmentally disabled but not mentally ill.

(f) "Mentally ill person" means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

(g) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(h) "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for this own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

Section 342. Consent Decree

At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition or provided in Section 344 of this Title, a consent decree may be entered as provided in Section 305 of this Title.

Section 343. Dismissal of Petition

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction other previous temporary order.

Section 344. Sustaining Petition

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section.

Section 345. Temporary Orders

Upon sustaining a petition the Court shall make such disposition orders as may be necessary to protect the child prior to the disposition hearing which shall be held without undue delay.

CHAPTER FOUR

DISPOSITION

Section 401. Disposition Hearing

After making an order of adjudication, finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe at a hearing scheduled for that purpose.

Section 402. Social Studies and Reports

(a) The Court may order any agency within its jurisdiction a request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

(b) After adjudication the Court may order or request, as appropriate, any agency to submit and pre-adjudicatory social studies or reports helpful in determining proper treatment and disposition for the family.

(c) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the disposition hearing.

Section 403. Treatment Plan

(a) In every case the Court shall order the Tribal Department and/or the Bureau of Indian Affairs Social Services Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

(b) The treatment plan shall contain at a
minimum (1) A brief social and family history

(2) A brief statement of the causes of the Court exercises its jurisdiction.

(3) The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished.

(4) The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore.

(5) The specific treatment or other social services offered by the Tribe or Bureau of Indian Affairs which the family should be required to accept.

(6) The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained to its home under supervision and when court supervision should cease.

(c) The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the disposition hearing.

Section 404. Medical Examination

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

Section 405. Hearing Purpose

The purpose of the disposition hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after

actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the child.

Section 406. Hearing Informal

The disposition hearing shall be informed and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

Section 407. Continuance

(a) The Court may continue the disposition hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

(c) In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

Section 408. Order of Protection

(a) The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this article. The order of protection may set forth reasonable conditions

of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to the proceeding.

(b) The order of protection may require any such person:

(1) To stay away from a child or his residence;

(2) To permit a parent to visit a child at stated periods;

(3) To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person whom legal custody of a child has been given:

(4) To give proper attention to the care of the home;

(5) To cooperate in good faith with an agency;

(i) which has been given legal custody of a child;

(ii) which is providing protective supervision of a child by court order; or

(iii) to which the child has been referred by the Court;

(6) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(7) To perform any legal obligation of support.

(c) When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (e) of this section.

(d) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if

the Court finds that the best interests of the child and the Tribe will be served thereby.

(e) A person failing to comply with an order of protection without good cause may be found in contempt of court.

Section 409. Reserved

Section 410. Placement Preferences

(a) In making a placement of or committing legal custody of a child to some person in the disposition process whether for foster care or adoption, the Court shall place the child in the following descending order of preference:

(1) The natural parents, adoptive parents, or stepparents as the case may be.

(2) A member of the Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(3) A member of another Indian Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(4) Any other person over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(5) Any other member of the Tribe and their spouse.

(6) Any other Indian person and their spouse.

(7) A foster home licensed by the Tribal Department of Social Services.

(8) An Indian foster home licensed by any other Licensing authority within the State or an Indian foster home licensed by some other Tribe.

(9) An institution for children or approved by the Tribal Department of Social Services with a program suitable to meet the child's needs.

(b) Where appropriate the Court, may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences.

(c) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(d) The Court may place the child with the Tribal or Bureau of Indian Affairs Department of Social Services or a child placement agency approved by the Tribal Department or the Tribal Legislative Body for further placement in lieu of a direct placement pursuant to subsection (a) of this Section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

(e) State courts shall follow the placement preference rules outlined herein.

Section 411. Extended Family Defined

For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., a child's extended family is defined to mean the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent over eighteen years of age and their spouse as those terms of relation are defined in this Act.

Sections 412-419. ReservedSection 420. Neglected or Dependent Child - Disposition

(a) When a child has been adjudicated to be neglected or dependent, the Court shall enter a decree of disposition. When the decree does not terminate the parent-child relationship, it shall include one or more of the following provisions which the Court finds appropriate:

(1) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.

(2) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with Section 410 of this Title.

(3) The Court may place legal custody in the Tribal Department of Social Services or a child placement agency for placement in a family care home, or other child care facility in accordance with Section 410 of this Title.

(4) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(b) The Court may enter a decree terminating the parent-child legal relationship of one or both parents when all reasonable efforts to treat the family have failed.

(c) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:

(1) Vest the tribal department of social services or a child placement agency with the legal custody and

guardianship of the person of a child for the purposes of placing the child for adoption according to the placement preferences; or

(2) Make any other disposition provided in subsection (a) of this Section that the Court finds appropriate.

(d) Upon the entry of a decree terminating the parent-child legal discharge the proceedings; or

(1) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(2) Make any other disposition provided in subsection (a) of this section that the Court finds appropriate.

(e) When a child has been adjudicated neglected because he has been abandoned by his parent or parents, the Court may enter a decree terminating the parent-child legal relationship if it finds:

(1) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(2) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents have failed.

(f) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

Section 421. Child in Need of Supervision - Disposition

When a child has been adjudicated as being in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

(a) The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.

(b) The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with Section 410 of this Title.

(c) The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

(1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel;

(3) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

(d) The Court may place legal custody in the Tribal Department of Social Services or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

(e) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that

he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(g) The Court may commit the child to any institution or group care facility designated by the Court.

Section 422. Delinquent Child - Disposition

If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, and clinical or educational reports, and other information pertinent to the care and treatment of the child.

(b) The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.

(c) A commitment of a child to a designated institution under Section 421 of Section 422 shall be for a indeterminate period not to exceed two years.

(d) The Tribal department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

(e) Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

Section 423. Legal Custody - Guardianship

(a) Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in Section 3(u) (4) and (5).

(b) Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined in Section 3(u); except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the Court.

(c) If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(d) An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the Court at any time may require.

(e) Any agency other than the department of institutions vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to deter _____ mine where and with whom the child shall live.

(f) No individual vested by the Court with legal custody of child shall remove the child from the state for more than thirty days without Court approval.

(g) A decree vesting legal custody of a child in an individual, institution, or agency other than the department of institutions shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall reviewed by the Court no later than six months after it is entered.

(h) The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying of renewal of the decree.

(i) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.

Sections 424-429. Reserved

Section 430. Probation for Delinquents and Children in Need of Supervision

(a) The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the disposition hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(b) The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(c) The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(d)

(1) When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding.

(2) The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the

alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(3) The hearing on the alleged violation shall be conducted as soon as possible.

(e) If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article which is in the best interest of the child and the Tribe.

(f) If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

(g) If the Court revokes the probation of a person over eighteen years of age, in addition to other action permitted by this article, the Court may sentence him to the Tribal jail for a period not to exceed one hundred eighty days during which he may be released during the *day* for school attendance, job training, or employment, as ordered by the Court.

Section 431-439. Reserved

Section 440. New Hearing Authorized

(a) A parent, guardian, custodian, or next friend of any child adjudicated under this article, or any person affected by a decree in a proceeding under this article, may petition the court for a new hearing on the following grounds:

(1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(2) That irregularities in the proceedings prevented a fair hearing.

(b) If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

Section 441. Continuing Jurisdiction

Except as otherwise provided in this article, the jurisdiction of the Court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until he becomes twenty-one years of age unless terminated by court order.

Sections 442-449. Reserved

Section 450. Motion for Termination of Parental Rights

(a) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

Section 451. Appointment of Counsel

(a) After a motion for termination of a parent-child legal relationship is filed pursuant to this article, the parent or parents shall be advised of the right of counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whatever the Court-fund has sufficient unobligated funds to pay an attorney a maximum of Five Hundred Dollars per case.

(b) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the

involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

Section 452. No Jury Trial

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

Section 453. Criteria for Termination

(a) The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:

(1) That the child has been abandoned by his parent or parents;

(2) That the child is adjudicated dependent or neglected and all of the following exist:

(i) That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;

(ii) That the parent is unfit;

(iii) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(b) In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or

parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:

(1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;

(2) Conduct towards the child of a physically or sexually abusive nature;

(3) History of violent behavior;

(4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

(5) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;

(6) Neglect of the child;

(7) Long-term confinement of the parent;

(8) Injury or death of a sibling due to proven parental abuse or neglect;

(9) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.

(c) In considering any of the factors in subsection (b) of this Section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

Section 454. Criteria

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

Section 455. Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship

(a) The Court, at the conclusion of a hearing which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

Section 456. Expert Testimony

(a) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the court finds.

(b) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

Section 457. Effect of Decree

(a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights,

powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent.

(b) No order or decree entered pursuant to this article shall dis-entitle a child to any benefit due him from any third person, including, but not limited to, any Indian Tribe, any agency, any state, or the United States.

(c) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

Section 458. Appeals

(a) Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(b) Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the Tribe to be paid from the court fund.

Section 459. Traditional Custodians and Grandparents Rights

(a) No disposition order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparent of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party provided, that adoptive traditional custodians shall also succeed to these rights and duties.

(b) The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

Section 460. Orders for Support

(a) Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Tribe, or take other reasonable action to provide support for the child.

(b) In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodians means after a hearing, whether the child has been paid in his own home or elsewhere.

(c) When the Tribe, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispense by court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances. In all cases of placement with a particular family, the contribution shall be paid to that family by the Court Clerk subject to the supervision of the Court to prevent waste or misuse of such funds.

CHAPTER FIVE

CHILD ABUSE

Section 501. Legislative Purpose

The Tribal Legislative Body hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Chapter it is the intent of the Tribe to protect the children within the jurisdiction of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Chapter.

Section 502. Definitions

As used in this Chapter, unless the context otherwise requires:

(a) "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death or condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(2) Any case in which a child is subject to sexual assault or molestation;

(3) Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide

adequate food, clothing, shelter, or supervision that a prudent parent would take.

(4) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(b) "Child-protection team" means a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the tribal law enforcement agency, a representative of a non-Tribal law enforcement agency, a mental health agency representative, a representative of the Bureau of Indian Affairs Social Services Department, a representative of the State social services department, an attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three (3) persons. The rule of the child protection team shall be advisory only.

(c) "Tribal department" means the tribal, or, where appropriate, the Bureau of Indian Affairs police department or social services.

(d) "Law enforcement agency" means a Tribal or Bureau of Indian Affairs police department, a police department incorporated municipalities or the office of the county sheriff of the State.

(e) "Neglect" means acts which can reasonably be construed to fall under the definition of "child or neglect" as defined in subsection (a) of this section.

(f) "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.

(g) "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(h) "Unfounded report" means any report made pursuant to this article which is not supported by some credible evidence.

Section 503. Persons Required to Report Child Abuse or Neglect

(a) Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or Tribal law enforcement agency.

(b) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist
- (5) Osteopath
- (6) Optometrist
- (7) Chiropractor;
- (8) Chiropodist or podiatrist;
- (9) Registered nurse or licensed practical nurse;

(10) Hospital personnel engaged in the admission, care, or treatment of patients;

(11) School official or employee;

(12) Social worker or worker in a family care home or child care center;

(13) Mental health professional;

(14) Any law enforcement officer;

(15) The tribal Attorney General, District Attorney, or his assistants.

(c) In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency or the tribal department.

(d) Any person who willfully violates the provisions of this Section:

(1) Shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00); and

(2) Shall be liable for damages approximately caused thereby.

Section 504. Required Report of Postmortem Investigation

(a) Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement

agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the tribal law enforcement agency, the tribal Attorney General, and the tribal department.

(b) The tribal department shall forward a copy of such report to the central registry.

Section 505. Evidence of Abuse

(a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(b) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

Section 506. Temporary Protective Custody

The Chief Judge of the tribal District Court shall be responsible for making available a person appointed by the Chief Judge, who may be the juvenile Judge, a Magistrate, referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Juvenile Division of the Court when no Judicial Officer is present in the Court, to issue written or verbal temporary protective custody orders, or in the alternative or in addition thereto, the Chief Judge may enter his general order detailing the procedure to be used in taking children into custody on an emergency basis when no Judge or Magistrate is present at the Court. These orders may be requested by the tribal department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before him a child he

reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or the condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The tribal department shall be notified on such action immediately by the Court-appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody under this Section shall not exceed seventy-two hours notwithstanding any provision of law to the contrary.

Section 507. Reporting Procedures

(a) Reports of known or suspected child abuse or neglect made pursuant to this Chapter shall be made immediately to the tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the tribal department.

(b) Such reports, when possible, shall include the following information:

- (1) The name, address, age, sex, and race of the child;
- (2) The name and address of the responsible person;
- (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
- (4) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
- (5) The family composition;
- (6) The source of the report and the name, address, and occupation of the person making the report;

(7) Any action taken by the reporting source;

(8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

(c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal district attorney's office and to the Tribal law enforcement agency.

(d) A written report from persons or officials required by this Chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

Section 508. Action Upon Receipt of Report

(a) The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

(b) The investigation, to the extent that it is reasonably possible, shall include:

(1) The nature, extent, and cause of the abuse or neglect;

(2) The identity of the person responsible for such abuse or neglect;

(3) The names and conditions of any other children living in the same place;

(4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;

(5) All other data deemed pertinent.

(c) The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(d) The tribal department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Tribal department shall provide for persons to be continuously available to respond to such reports. Tribes and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Tribal department or to have such arrangements made through agreements with local law enforcement agencies.

(e) Upon receipt of a report, if the tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the tribal law enforcement agency and the tribal district attorney shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with tribal law.

(f) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to

contact the Tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Tribal department, it shall make a complete investigation and may request the Tribal district attorney to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Tribal department.

Section 509. Child Protection Teams

It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.

(a) The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(b) At each meeting, each member of the child protection team shall be provided with all available records and reports on each case to be considered.

(c) The public, in a non participatory role, shall be permitted to attend those portions of child protection team meetings, concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to public-agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.

(d) At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or

neglect; whether the child is an infant, a toddler, a preschool or school-aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The team shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.

(e) At this public session, and immediately after any executive sessions at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this article, and shall publicly report non-identifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(f) After this mandatory public discussion of agency responses, the child protection team shall go into executive session upon the vote of a majority of the team members to consider identifying details of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians and psychiatrists, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive sessions shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

(g) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

(h) The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribes and

state and federal agencies may cooperate in meeting the requirements of this subsection.

(i) Each member of the team shall be appointed by the agency he represents, and each team shall serve at the pleasure of the appointing agency; except that the director of the Tribal department shall appoint the representatives of the lay community, and shall actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.

(j) The director of the tribal department or his designee shall be deemed to be the coordinator of the child protection team.

(k) The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigation report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety (90) days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the tribal department for that purpose.

Section 510. Immunity from Liability

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this Chapter or otherwise performing this duties or acting pursuant to this Act shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

Section 511. Child Abuse and Child Neglect Diversion Program

(a) The tribal attorney general, upon recommendation of the Tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Tribal department and the Tribal district attorney. If a person is so diverted from the criminal justice system, the tribal attorney general shall not file charges in connection with the case if the person participates to the satisfaction of the Tribal department and the Tribal district attorney in the diversion program offered.

(b) The initial diversion shall be for a period not to exceed two (2) years. This diversion period may be extended for one (1) additional one-year period by the Tribal district attorney if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Tribal district attorney and the tribal department.

(c) If the person diverted successfully completes the diversion program to the satisfaction of the tribal department and the tribal attorney general, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(d) Participating by a person accused or suspected of child abuse in any diversion program shall be voluntary.

Section 512. Evidence Not Privileged

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Chapter.

Section 513. Court Proceedings - Guardian Ad Litem

(a) In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be legal or actual physical custodians or guardians of the child. In every such case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.

(b) The Court in every case filed under this Chapter shall appoint, at no fee, a guardian ad litem at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Chapter and with reports of any examination of the responsible person made pursuant to this section. The Court or the social services worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and disposition hearings and may introduce and examine his own witnesses, make recommendations to the Court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(c) If the prayer of the petition is granted, the costs of this proceedings, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.

(d) It is not necessary that the guardian ad litem be an attorney.

Section 514. Central Registry

(a) There shall be established a central registry of child protection in the Tribal department for the purposes of maintaining a registry of information concerning each case of child abuse reported under this Chapter.

(b) The central registry shall contain but shall not be limited to:

(1) All information in any written report received under this Chapter;

(2) Record of the final disposition of the report, including services offered and services accepted;

(3) The plan for rehabilitative treatment;

(4) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;

(5) Any other information which might be helpful in furthering the purposes of this Title.

(c) The director of the tribal department shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his office so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only department personnel, judges, justices and law enforcement personnel shall have access to the password.

(d) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in Section (503)(b) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying information the subject of a report shall not divulge or make public any identifying information unless he is a Tribal district attorney or

other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

(e) Unless an investigation of a report conducted pursuant to this article determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Tribal department or the Tribal law enforcement agency.

(f) In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the child's eighteenth birthday. Once sealed, the records shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the department and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(g) At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

(h) At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses to does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the District Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this article. The tribal department shall be given notice of the hearing. The burden in such a hearing shall be on the Tribal department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(i) Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this Act shall be given to the subject of such report and to the Tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

(j) Any person who willfully permits or who encourages the releases of data or information contained in the central registry to persons not permitted access to such information by this article shall be subject to a civil penalty not in excess of Five Hundred Dollars (\$500.00) and any actual damages sustained.

(k) The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other Tribes, states and the national center on child abuse and neglect.

Section 515. Confidentiality of Records

(a) Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this Section shall be subject to a civil penalty or not more than Five Hundred Dollars (\$500.00).

(d) Only the following persons or agencies shall be given access the child abuse or neglect records and reports.

(1) The law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;

(2) A physician who has before him a child whom he reasonably suspects to be abused or neglected.

(3) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;

(4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;

(5) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

(6) A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(7) The central registry of child protection;

(8) All members of a child protection team;

(9) The attorney general and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary.

(10) Such other persons as a Court may determine, for good cause.

(e) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (d) of this Section and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be release unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a tribal attorney general or other law enforcement official and the purpose is to initiate .court action or unless he is the subject of a report.

CHAPTER SIX

DEVELOPING FOSTER CARE

HOMES Section 601. Responsibility

It shall be the responsibility of the Tribal Social Services Department to recruit, screen, and license foster homes for children in accordance with this Title.

Section 602. Licensing Foster Homes

The Social Services Department pursuant to rules not inconsistent with this Act which it shall develop and file with the Tribal Secretary's office, shall have the authority to license foster care homes for the care of children.

Section 603. Basic Standard for Foster Families

In considering Indian foster parents the primary consideration should be the parents capacity to provide love and understanding to a child or children in distress.

Section 604. Basic Requirements of Foster Families

Foster families shall meet the following personal criteria:

(a) The age of foster parent(s) shall be consideration only as it affects their physical capability, flexibility, and ability to care for a specific child.

(b) A written statement from a physician, regarding the foster parent(s) and their children's general health, specific illnesses, or disabilities shall be routine part of the study-evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken

tuberculin tests and have been found free of disease; other tests may be required as indicated.

(c) Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

Section 605. Income of Foster Families

(a) When the agency does not have a plan for paying foster families a salary, it shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.

(b) Employment of foster parent(s) outside the home.

(1) In two parent homes it is preferable, in most instances, that both foster parents shall not be employed outside the home so that one parent is available for the parenting that the child requires. The agency shall make decisions regarding such situations on the basis of what is the best interest of the child.

(2) When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by the Agency) for care and supervision of the child after school and during the summer while parent(s) are at work.

Section 606. Physical Facilities

(a) Physical facilities of the foster home shall present no hazard to the safety of the foster child.

(b) Foster homes shall meet zoning and housing requirements and/or codes as set by the public safety department for individual family dwellings.

(c) Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

(d) Comfort and privacy:

(1) It is preferable for no more than two children to share sleeping rooms.

(2) The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities attitudes, and behavior.

(3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.

(4) Individual space shall be provided for the child's personal possessions.

(5) In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socio-economic circumstances create a situation in which such exceptions will not be to the detriment of the child.

(e) Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.

(f) If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

Section 607. Family Composition

(a) Two parents shall be selected in most cases; however, single parents shall be selected when they can more effectively fulfill the needs of a particular child.

(b) The presence of other children (either own or foster), and other adults (i.e. grandparents, aunts, etc; or unrelated persons) shall be taken into consideration in terms of how they might be effected by or have an effect upon another child.

(c) The number and ages of children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster parent(s) ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit. It is preferable that:

(1) Foster parent(s) shall care for not more than two infants (under two), including the foster parent(s) own children.

(2) Foster families should not have more than a total of six children, including foster children and foster parent(s) own children, in the foster home. Exceptions shall be made in order to keep siblings together.

(3) The age range of the children in a foster home shall be similar to that in a "normal" family in order to lessen competition and comparisons.

(4) All placement situations shall consider the effect of having some children in the foster home whose parent(s) visit them and other children whose parent(s) do not.

(5) A foster home shall not provide placements for more than one agency at a time without a written agreement delineating the responsibilities of all parties involved.

Section 608. Personal Characteristics

Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

(a) Psycho-social history, including significant childhood relationships and experiences (parent-child, sibling, or other relationships).

(b) Role identification and acceptance.

(c) Reactions to experiences of separation and loss (through death, desertion, etc.)

(d) Education, employment, and patterns of interpersonal relationships.

(e) General social, intellectual and cultural level of the family.

(f) Level of everyday functioning:

(1) Home and money management ability;

(2) Daily routine and habits;

(3) Reactions to stress.

(g) Affect responses (ability to give and receive love, deal with loss, separation and disappointment, etc.)

(h) Moral, ethical, and spiritual qualities of the family.

Religious affiliation and habits.

(j) Hobbies, special interests, skills, and talents.

Section 609. Foster Parenting Abilities

As assessment of prospective foster parent(s) parenting ability regarding a specific child shall take into account the following:

- (a) Motivation for application at this time.
- (b) Characteristics and number of children best suited to foster family.
- (c) Existing family relationships, attitudes, and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might effect the foster child.
- (d) Attitudes of significant members of the extended family regarding child placement.
- (e) Ability to accept and love child as he or she is.
- (f) Capacity to absorb the child into family life functioning without undue disruption.
- (g) Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children.
- (h) Own children's attitudes towards accepting foster child.
- (i) Realistic assessment of positive and negative aspects of foster parenthood.
- (j) Personal characteristics necessary to provide continuity of care throughout child's need for placement.
- (k) Flexibility to meet changing needs over the course of placement.
- (l) Ability to accept child's relationship with own parent(s).
- (m) Ability to relate to neglecting and abusing natural parent(s).

- (n) Special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.)
- (o) Areas in which ongoing social work assistance may be needed.
- (p) Ability to help a child return home or be placed for adoption and gain satisfaction for the experience.

CHAPTER SEVEN

ADOPTIONS

Section 701. Jurisdiction Over Adoptions

(a) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction of the court, is unmarried, less than eighteen years of age, and either:

- (1) A member of an Indian Tribe, or
- (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
- (3) Whose case has been transferred to the Juvenile Division of the District Court from the courts of a state, or Tribe which has assumed jurisdiction over said child,
- (4) The adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.

(b) The Juvenile Division of the District Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:

- (1) A bona fide resident of or domiciled within the jurisdiction of the Court, or
- (2) Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile, or
- (3) A member of the Tribe.

Section 702. Purpose of Adoptions

The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Act shall be so recognized by every agency and level of the Government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

Section 703. Types of Adoptions

There shall be three types of adoptions recognized by this Tribe, namely:

(a) Statutory adoptions under Tribal law entered into pursuant to Subchapter A of this Chapter.

(b) Statutory adoptions under the laws of some other Tribe, State, or Nation having jurisdiction over the parties and the subject matter.

(c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Tribal Common Law until such time as the proper procedures for such adoptions are written down as a part of the Tribal Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents estates.

Section 704. In Camera Determination of Enrollment Eligibility

Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the

eligibility of the child for enrollment as a citizen and member of the Tribe, and Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non-identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s), and shall seal all records received to maintain their confidentiality of the parties. If the Court determines that such child is eligible for enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Tribal enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown.

SUBCHAPTER A

STATUTORY ADOPTIONS

Section 710. Eligibility for Statutory Adoption

Every child within the jurisdiction of the Juvenile Division of the District Court at the time a petition for adoption is filed, may be adopted subject to the terms and conditions of this Subchapter.

Section 711. Eligibility to Adopt by Statutory Process

The following person are eligible to adopt a child pursuant to this Subchapter, and subject to the placement preferences of Section 410 of this Act:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;

- (c) An unmarried person who is at least twenty-one (21) years old;
- (d) A married person who is legally separated from the other spouse and at least twenty-one (21) years old.
- (e) In the case of a child born out-of-wedlock, its unmarried father or mother.

Section 712. Consent to Statutory Adoption

(a) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:

(1) both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.

(2) a parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.

(3) if both parents be deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody of said child for the preceding six (6) month period, or a person or the executive head of an agency having custody of the child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

(b) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of & court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was

interpreted into a language that the parent or Indian custodian understood.

(c) Any consent given prior to or within ten days after the birth of a child shall not be valid.

(d) Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

Section 713. Voluntary Relinquishment

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Section 712(b), (c), and (d) of this Subchapter, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Division of the Court with notice to the Tribal Department, District Attorney, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court

Section 714. When Consent of Parents Unnecessary

Adoption of a child may be decreed without the consent required by Section 712 of this Subchapter only if the parents, or the traditional custodians having custody if the parents be deceased, have:

(a) had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction, or

(b) been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be

unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority, or

(c) for a period of twelve months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:

(1) in substantial compliance with any decree of a Court of competent jurisdiction ordering certain support to be contributed, or

(2) if no court order has been ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.

(d) been finally adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority.

In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.

Section 715. Notice and Hearing for Adoptions Without Consent

Before the Court hears a petition for adoption without the consent of the parents as provided by Section 714 of this Subchapter, except proceedings pursuant to Section 714(a), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain and the application shall contain the name of the child to be adopted, the

time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption.

Section 716. Consent of Child

Whenever a child be a sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

Section 717. Petition

A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

(a) The full names, ages, and places of residence of the Petitioners, and, if married, the place and date of their marriage

(b) Their relationships with the child, if any, and their tribal affiliation by blood and membership, if any

(c) When and from whom the petitioners acquired or intend to acquire physical custody of the child.

(d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll number, if known.

(e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex,

race, and tribal affiliation by blood and membership, including tribal roll number, if known.

(f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.

(g) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(h) A full description and statement of the value of all property owned or possessed by the child.

(i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.

(j) Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

(k) The facts which bring the child within the jurisdiction of the Court.

Section 718. Investigation

(a) Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

(1) by the agency having custody or legal guardianship of the child, or

(2) in other cases, by the State, Bureau of Indian Affairs, or Tribal Department, or

(3) by a person qualified by training or experience, designated by the Court;

and shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from

the issuance of the order for investigation, unless time therefore is extended by the Court.

(b) Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

(c) The Court may order agencies named in Subsection (a) of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

(d) Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.

(e) Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the Tribal Department and the District Attorney.

Section 719. Adoption Hearing

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by

a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, Federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or, in case of need, refer the matter to the tribal department and Attorney General for the purpose of determining whether a involuntary juvenile petition should be filed.

Section 720. Report and Final Decree of Adoption

If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

Section 721. Contents of Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child.

Section 722. Effect of Final Decree of Statutory Adoption

(a) After a final decree of adoption pursuant to this Subchapter is entered, the relationship of parent and child, and all the rights, duties and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).

(b) After a final decree of adoption pursuant to this Subchapter is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in a Tribe by virtue of his birth to said natural parents.

(c) Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any timewithin two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said

person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

Section 723. Records and Hearings Confidential Unless

the Court shall otherwise order:

(a) All hearings held in proceedings under this Subchapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including traditional custodians, representatives of the Tribal Department when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, traditional custodians, and the Tribal Department.

(b) All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

(1) Upon order of the Court for good cause shown.

(2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

(3) The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity, by affidavit, the traditional custodians and natural grandparents

may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

(4) For the purposes of obtaining the enrollment of the child with another Indian Tribe, the Court may upon request of an enrollment officer of that Tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Tribe subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Tribe for an in camera, review only, or allow such Judge to review the record in the District Court, in camera, for the purpose of said Judge certifying to his Tribe that the child is eligible for membership in that Tribe.

Section 724. Certificates of Adoption

(a) For each adoption or annulment of adoption, the Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

(c) One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judges certificate showing:

- (1) The original and adoptive name and tribal affiliation of the child,
- (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents,
- (3) The names and addresses of the adoptive parents,
- (4) The identity of any agency having files or information relating to the adoptive placement,
- (5) Any affidavit of the biological parent requesting that their identity remain confidential.

Section 725. Foreign Decree

When the relationship of parent and child has been created by a decree of adoption of any Court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by section 722 of this Chapter.

Section 726. Adoption of Adults

(a) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

Section 727. Appeals

An appeal to the Supreme Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals.

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE VIII

ELECTION ACT

Approved Revisions
PBC Resolution #18-75

TITLE

ELECTIONS

ELECTION ACT
OF
THE PAWNEE INDIAN TRIBE OF OKLAHOMA

Section 1. Authority: This Election Act is hereby enacted by the Pawnee Business Council under authority delegated by Article IV, Section 4-i, of the Constitution of the Pawnee Nation of Oklahoma.

Section 2. Purpose: The Purpose of this Act is to repeal the Pawnee Nation of Oklahoma's Election Act of 2018 and to establish the rules and procedures for conducting election authorized in Article IV, Section 4-i of the Constitution. The intent of the Election Act is to establish procedures for fair elections and to insure the secrecy and sanctity of the ballot. The regulations and procedures contained in this Act will be administered by the Election Commission.

Citation: This enactment may be cited as the 2018 Election Act of the Pawnee Nation of Oklahoma.

Section 3. Definitions:

Business Council – The Pawnee Business Council, the elected governing body of the Pawnee Nation of Oklahoma established by Article IV, of the Tribal Constitution.

Constitution – The Constitution of the Pawnee Nation amended June 14, 2008 as amended.

Dates of Events – In determining the date of any event pertaining to elections, neither the day of the election nor the day of the event will be counted.

Election Commission – The general Election Commission will be established by the Pawnee Business Council. The Chairman and the Secretary will be appointed to serve for 4 years and all other Commission seats will serve 2 years.

Election Notice – The official notice that an election shall be held on a specific date shall be issued by the Election Commission.

Section 4. Election Officials:

The Pawnee Business Council shall appoint an Election Commission. The Commission will have overall responsibility for the conduct of all elections and its' duties will include, but are not limited to, the following:

(A) Election Commission: The Election Commission shall consist of:

Chairman – The Chairman shall be the presiding member and responsible for the overall activities of the Election Commission, including the safekeeping of ballots and ballot box(s).

Secretary – The Secretary shall record and maintain accurate minutes of meetings and records pertaining to an election. The Secretary shall certify the authenticity of these records and be responsible for providing all Election Committee certifications except where otherwise provided herein after each Election Committee Meeting. All records shall be filed with the Secretary of the Pawnee Business Council within five (5) working days of each meeting.

Clerk – The Clerk shall assist in the conduct of the elections and check off the voters on the list of qualified voters. Each clerk shall keep a separate record of the members voting which shall be cross-checked frequently by the Chairman or his/her designee in order to insure accuracy.

Sergeant-at-Arms – The Sergeant-at-Arms shall maintain order at the polls and enforce the election laws. The Sergeant-at-Arms shall have these powers from the time the polls open until declaration of all election results are final.

Alternate – The Alternate is required to know and understand all Commissioners duties in the case of an absence of a Commissioner and is required to participate in all elections.

(B) Publication of Election Notice: At least 60-days prior to the date of an election of Pawnee Business Council members a public notice of the election will be made and notices will be posted at the offices of the Bureau of Indian Affairs, Pawnee Agency and other sites as designated by

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the Election Commission. The Pawnee Chief, the Chaticks si Chaticks Newsletter, and the internet will carry the election notice as a public service announcement.

(C) Election Supplies: The Election Commission shall arrange for delivery of election supplies.

(D) Rulings of Eligibility of Candidates: The Election Commission shall have the authority to rule upon the eligibility of the candidates, and their decision will be final. (See Section 13, A.)

(E) Candidate Forum: The Election Commission will not directly oversee the coordination of a candidate forum but will coordinate with another entity or organization to conduct and host the forum for candidates. The Commission will include the date for the candidate forum on the “Schedule of Events”.

Section 5. Voter Qualifications:

(A) Resident Voters: Any member of the Pawnee Nation who is eighteen (18) years of age or over on the date of the election.

Voter identification will be in the form of either a Pawnee Nation membership identification card or a state issued identification.

(B) Absentee Voters: Any member of the Pawnee Nation who is eighteen (18) years of age or over on the date of the election who expects to be absent from the polling place on the day of election. (see Section 8, Absentee Voting)

Voter identification – two (2) forms are required: a Pawnee Nation membership card and a state issued identification.

Section 6. Ballots:

(A) Form of Ballot: Ballots shall be designed by the Election Commission.

- i. **Challenged Ballots:** All Challenged ballots shall be clearly marked on the ballot as “Challenged”
- ii. **Spoiled Ballots:** All spoiled ballots shall be clearly marked on the ballot as “Spoiled”.

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- iii. **Paper:** Resident Voter ballot shall be on secure paper. Electronic ballots will be in PDF Format.
- iv. **Absentee Ballot:** Shall be on secure paper and clearly marked ABSENTEE BALLOT and printed on different color paper than the Resident Voter ballot.
- v. **Electronic Ballot:** RESERVED for future modification

(B) **Number of Ballots:** Ballots will be supplied by the Election Commission in sufficient quantity to ensure each voter is provided with a ballot.

- i. **Numbering:** Each ballot shall be numbered starting with the number 101.

(C) **Delivery and Receipt of Ballots:** The Chairman of the Election Commission shall have all election materials delivered to the polling place. The Clerk shall be responsible for all election materials as provided in Section 2 of this Act.

(D) **Ballot Box:** The Ballot box shall be secured with a lock and key. The key to the lock shall be given to the Chairman of the Election Commission at the polling place. The Chairman must be accompanied by at least one other Commissioner and/or Tribal Law Enforcement if the ballot box is accessed at any given time.

Section 7. Voting List:

Placement for List of Registered Voters: On the day of election, the Clerk of the Election Commission will maintain the official list of all eligible voters at the polling site for official use only.

Section 8. Absentee Voting: In accordance with the Pawnee Nation Constitution, Absentee Ballots shall be issued for all elections.

(A) **Basis for providing Absentee Ballots:** Whenever a qualified voter expects to be absent for any reason, they can request an absentee ballot for the election provided in Section 8 (B).

- (B) **Requesting and Issuing Absentee Ballots:** All requests for absentee ballots shall be made in writing and received by the Election Commission at the following address, Pawnee Nation Election Commission, PO Box 600, Pawnee, Oklahoma 74058, or via fax or email, no less than twenty-one (21) days before Election Day. Upon receipt of a valid request, the Election Commission shall forward to the voter all necessary forms to be used in the pending election. Any ballots received after 12:00 noon on the day of the election shall not be counted.

The Election Commission Clerk shall maintain a file of all requests. The file shall consist of the date, name, and address of all persons mailed absentee ballots. Each ballot shall be marked "Absentee Ballot" and the date of issuance.

After issuance of the absentee ballot, the Election Commission shall list each person sent an absentee ballot and that individual shall not be allowed to vote at the polling place for the election unless Section 10 Special Circumstances apply.

- (C) **Execution and Return of Ballots and Certification:**

The voter shall mark their ballot and tear off the numbered stub and handle as indicated below:

- i. Fold the ballot and place in the provided inner envelope.
- ii. The voter shall sign the certification.
- iii. The pre-addressed envelope shall be mailed to the Election Commission, to meet the noon Deadline on the Election Day.
- iv. Absentee Ballots: Absentee ballots shall remain in a locked box at the Pawnee Nation Headquarters until 1:00 pm on the day of the election. The Election Commission Clerk, escorted by Pawnee Nation Law Enforcement, shall transport the locked absentee box to the election site to the Election Commission.

- (D) NO ABSENTEE BALLOTS SHALL BE SUBMITTED OR RECEIVED OTHER THAN PROVIDED FOR IN THIS SECTION, WHICH IS VIA U.S. POSTAL SERVICE, UPS OR

FEDEX. (NOTE: Absentee ballots cannot be hand carried to polling place)

Section 9. Duties of Poll Officials and Voters:

The duties of the Chairman, Secretary, and Clerk shall be as follows:

- (A) The Chairman shall be in charge of the polling place and responsible for the availability of voting booths.
 - (B) The election officials shall be present at the polling place on Election Day from 8:00 am to 7:00 pm and until the tally has been recorded and reported. The empty ballot box shall be locked and remain locked until time to count the ballots.
 - (C) Each voter states their name to the clerk and signs the official list of eligible voters. The election officials shall then determine the voter's eligibility and issue a ballot.
 - (D) Upon receipt of a ballot the voter shall go to a voting booth and mark their ballot. Only one person shall occupy a voting booth at one time except as provided in Section 9 (F).
 - (E) The voter shall mark their ballot with an X or check mark and deposit their ballot before leaving the polling place. A mark, to be valid must be identifiable with the appropriate square or place on the ballot. After the ballot is marked, the voter shall tear off the stub and deposit the folded ballot in the ballot box.
 - (F) When a voter presents for a ballot and states that he/she, because of physical disability or infirmity, is unable to mark their ballot, one of the election officials shall have the voter swear to the following:
 - “Do you solemnly swear or affirm that you are unable to mark your ballot for voting because of physical disability or infirmity?”
- i. Should the voter qualify himself/herself, two polling place officials shall give the voter the assistance they need. The voter must state, without suggestion from the officials, the way they wish to vote. In no instances shall an election official by word, action or

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expression, attempt to influence the voter as to how they should vote.

- (G) Any person waiting in line to vote at closing time shall be permitted to vote, but those presenting themselves after the hour for closing of the polls shall not be permitted to vote. The Sergeant-at-Arms will monitor and enforce.

Section 10. Handling Special Circumstances:

- (A) **Spoiled Ballot:** In the event a voter marks their ballot in error in the process of voting and presents it as such to Election Officials, the ballot shall be considered spoiled and void. A replacement ballot shall be issued to the voter and the Commission shall mark on the stub of the spoiled ballot "SPOILED".
- (B) **Challenged Ballot:** A voter, who has been assigned to an absentee ballot and checks in at the polling place shall be issued a "Challenged Ballot" that shall be stamped "Challenged" on the stub and ballot. The Challenged ballot must be kept separate from other ballots and are not included in the tabulation until after the voter's eligibility is confirmed by the Election Commission. The challenged ballot shall be placed in a special "Challenged Ballot" box immediately after the voter has cast their vote. The Election Commission shall verify that the issued absentee ballot has not been returned as set forth in Section 11 and the challenged ballot shall be counted.
- (C) **Alternates for Polling Officials:** Should an election official of the polling place become ill or have an unforeseen emergency, the Chairman of the election commission shall be notified immediately so that the Alternate may assume the responsibilities of the vacated position.
- (D) **Campaigning and Loitering:** No person shall be allowed to campaign or loiter within one hundred (100) feet of the election site during voting hours. The Sergeant-at-Arms shall maintain order during the election.
- (E) **Ties:** In the event that two or more candidates are tied for a Pawnee Business Council position for which they

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filed, the Election Commission shall conduct a recount of ballots. ***Should a tie exist at the completion of the recount, a run-off election will be held. (see Section 10 (F))***

- (F) **Run-Off Elections:** A candidate must receive 50% plus one (1) of the votes in order to be elected. If the count shows that the highest number of votes cast for any one (1) candidate is less than 50% plus one (1) of the votes cast, a run-off election shall be held within sixty (60) days between the two candidates receiving the highest number of votes cast in the general election. In the event of a tie vote between the candidates, two (2) names shall be on the run-off ballot. The Election Commission shall supervise the run-off election using the rules and procedures followed in the general election.
- (G) **Death of a Candidate:** In the event of a death of one or more of the candidates after the close of the candidate filing period the Pawnee Nation Election Commission shall: (1) proceed with the remaining candidates if more than one candidate remains or (2) declare the remaining candidate the uncontested winner of the election, if only one remains and (3) refund of filing fee to the next of kin who is financially responsible for funeral expenses.

Section 11. Canvas of Election Results:

The Chairman, Secretary and Clerk shall count and record the votes as soon as the polls close and notify the President of the Pawnee Business Council of the results. All marked, unmarked and Absentee Ballots shall be turned over to the Election Commission Chairman after closing the polls. The Election Commission Chairman shall issue a signed receipt for the ballots and have the ballots locked in the Pawnee Nation Headquarters for two (2) years before being destroyed, where they will be available for inspection under the supervision of the Pawnee Business Council.

- (A) **Poll Watchers:** Each candidate is *entitled to choose one person to observe the counting of ballots on their behalf.* In elections to vote on Tribal Questions, the Election Commission may designate two (2) watchers for the side of Tribal Question under consideration. No watcher shall in any way interfere or hinder the election officials in exercising their duties and responsibilities.

- (B) **Counting the Ballots at the Polling Place:** Immediately after closing the polls, the Election Commission shall count the votes cast, in the following manner: As the ballots are opened, the Election Commission Chairman shall verbally announce and display the choice or choices indicated on the ballot. The Secretary, Clerk and poll watchers shall record such information on tally sheets. *The winning candidates for the Pawnee Business Council shall be determined by a vote of 50% plus one (1).* Upon completion of the tally, the Election Commission Chairman shall execute a certification of the voting results and post a copy of such notice as identified in Section 4 (B).
- (C) **Preparation for Counting Absentee Ballots:** The Election Commission Clerk and one other Election Commission official shall verify the absentee ballots. Each pre-addressed return envelope shall be opened, and the Election Commission Clerk shall then determine whether the person whose name is signed to the certification is a registered voter and by verifying against the absentee voting list. The sealed inner envelope shall then be dropped into the locked absentee ballot box and remain there until the count of absentee ballots.
- (D) **Counting Absentee Ballots:** The Chairman of the Election Commission shall open the absentee ballot box and prepare for counting. The inner envelope containing the absentee ballot will now be opened by the Election Commission Chair in the presence of the poll watchers. The counting of the ballots shall be as set forth in Section 11 (B). Storage of inner envelope shall be identified as stated in Section 11.
- (E) **Announcing Results of Election:** Immediately upon completion of the count, the Chairman of the Election Commission shall convey to the Pawnee Business Council President the un-official results of the voting and post at the polling place.
- (F) **Certification of Election Results:** The Election Commission will certify the election results and report all necessary tabulations. This will include, but not limited to, total amount of ballots printed, mailed absentee ballots, absentee ballots received and counted,

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number of spoiled/challenged ballots, total ballots issued, and total ballots counted. The certification will be presented to the office of the Pawnee Business Council President.

- (G) **Return of Election Materials:** The marked ballots, all unused ballots, the tally sheets, and the original Certificate of Results shall be placed in the ballot box. The boxes shall be locked and delivered by the Secretary and Clerk of the Election Commission to the Pawnee Nation Headquarters.
- (H) **Improperly Marked Ballots:** Should a portion of a ballot be miss-marked, it shall not be excluded from the tally, only the part which is correctly executed shall be counted. Any ballot, on which the intent of the voter cannot be determined, shall be preserved and filed with the other ballots for safekeeping with the notation placed on the face of the ballot indicating it was not counted.

Section 12. Challenges of Election Results:

- (A) **Request for Recounts:** Any qualified voter of the Nation may at any time within the protest period of three (3) business days of the announcement of the unofficial result of an election, file with the Chairman of the Election Commission a challenge for the results of the election and request a recount. The request shall specify the candidate or position on behalf of which the request is being filed.

The request for a recount must be in writing with reason given, signed and accompanied by a \$500.00 recount fee by Cashier's Check or Money Order. The recount fee is non-refundable.

Upon receipt of the request for recount and the recount fee, the Election Commission shall conduct a recount of the votes. Poll watchers are allowed to be present at all recount proceedings. No challenge(s) not made within the time frame provided will be considered.

- (B) **Protests Not Involving Recounts:** Any qualified voter of the Pawnee Nation may at any time within the protest period of three (3) business days of the announcement

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of the un-official results of an election, file with the Chairman of the Election Commission a written and signed protest or challenge concerning any aspect of the election. The protest will be accompanied by a non-refundable \$100.00 filing fee (payable by Cashier's Check or Money Order). The Chairman of the Election Board shall respond within one week following the closing of the protest period. All decisions made by the Election Commission on protests are final.

Section 13. Types of Elections

(A) Election of Business Council Members:

- i. Election Date:** Elections shall be conducted on the first Saturday in May and of each odd numbered year. (Article 4, Section 4, Constitution of the Pawnee Nation of Oklahoma).
- ii. Term in Office:** The President, Treasurer, and the First and Second Council Members shall be elected to a four (4) year term. The Vice-President, Secretary, and the Third and Fourth Council Members shall be elected to a four (4) year term. (Terms shall be staggered in that sequence)
- iii. Eligibility:** All members of the Pawnee Nation of Oklahoma who have reached the age of 25 (twenty-five) years, are eligible to file their candidacy for the Pawnee Business Council with the following exceptions:
 1. Those persons previously convicted in a court of competent jurisdiction of a felony; or
 2. Those persons receiving a dishonorable discharge from military service, "See Candidate Form." In accordance with Article IV, Section 4 (iii) of the Pawnee Nation Constitution. (A candidate who served in the military shall produce their DD

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214, Discharge Form.) Other discharge qualification will be eligible for candidacy.

3. Any member of the Pawnee Nation filing for office shall not be eligible if they are indebted to the Pawnee Nation for any amount. (Note: In the event the debt is paid, that member will be eligible to file.)

iv. Filing for Office: A qualified person seeking election as a member of the Pawnee Business Council must personally file a written notice, providing two (2) forms of identification, one form of identification must be a photo ID, such as a Pawnee Nation Membership Identification Card, driver's license or Social Security Card, accompanied by the Application Packet Waivers and a non-refundable Filing Fee of \$300.00 payable by money order or cashier's check with the Election Commission. Eligible candidates can only file for one position. Filing Fees shall be used for election expenses.

v. Eligibility of Candidates: The Election Commission shall promptly review all filings for the Pawnee Business Council, whether challenged or not, and confirm the eligibility of each candidate. If the Election Commission determines that a candidate is not eligible, the Election Commission shall notify each candidate that their candidacy is being challenged and will provide the reason(s) for the challenge. The candidate shall be required to provide satisfactory proof of eligibility within two (2) business days after notification, or he/she shall be declared ineligible. The Pawnee Nation Election Commission decision on eligibility shall be final, unless contested in Pawnee Nation District Court.

vi. Challenge of Candidates: Any voter may challenge the eligibility of any person to be a candidate by filing a written petition with the Election Commission. No specific form of

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petition shall be required although the petition shall:

1. Clearly indicate the substance of the challenge
2. Specify the name
3. Include supporting evidence
4. Pay a Non-Refundable \$100.00 filing fee (payable by Cashier's Check or Money Order)

The challenge must be filed within five (5) days of posting the list of candidates. The Election Commission shall promptly notify the candidates in writing stating the basis for the challenge and the person filing the challenge. The Pawnee Nation Election Commission shall rule on each challenge and each person shall be notified by certified mail of their decision. All decisions can be contested in Pawnee Nation District Court.

- vii. Appeal to Tribal Court:** Any candidate who is aggrieved by order of the Election Commission on eligibility may appeal that decision to the Pawnee Nation District Court. The court shall use expedient proceedings in the determination of the case(s) prior to the deadline for receipt of request for Absentee Ballots.

(B) Constitutional Amendments

- i.** Amendments to the Constitution may be proposed by a majority vote of the Pawnee Business Council or by a petition signed by at least fifty (50) of the adult members of the Pawnee Nation of Oklahoma. The Constitution may be amended by a majority vote of the qualified voters of the Pawnee Nation voting in an election called for the purpose by the Secretary of Interior and conducted pursuant to the rules and regulation of the Pawnee

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Nation. Provided, that, at least fifty (50) of those qualified to vote shall cast ballots in such election. The amendment shall become effective when approved by the Secretary of Interior, so long as such approval is required by Federal Law and ratified by the adult members of the Nation.

- ii.** An election proposed under Constitution Article XI (Amendments) shall be held by the Election Commission within sixty (60) days of the Pawnee Business Council vote to propose, or the receipt of a petition proposing the amendment.
- iii.** The Election Commission shall set a date for the election and give public notice.
- iv.** The ballot shall allow a vote on at least each Article that is proposed to be amended, added, or deleted.
- v.** The Pawnee Business Council resolution or the petition proposing the amendment shall indicate a yes or no vote on any one or more provisions as a group.

(C) Special Elections

- i.** An election to fill a vacancy under Article IV shall follow the rules of this section. The Election Commission shall follow other applicable provisions of this Act to the extent practical given the priority of meeting the Constitutional deadline. Matters not addressed in this section are subject to the sole discretion of the Election Commission.
- ii.** A Special Election may be held in accordance of this Election Act.

Section 14. Installment:

All those elected in any election shall be installed in their respective offices no sooner than 14 days when the polls close. Each candidate elect for each office shall swear and subscribe the following oath of office which shall be administered by a member of the Pawnee Nation Judiciary:

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I, [insert name], elected as [insert office] of the Pawnee Business Council on [insert date of election], do solemnly swear to support, defend and uphold the Constitution of the Pawnee Nation. And, further, I solemnly swear to perform the duties of the office to which I was elected, to the best of my ability, to do no harm, take no gift, favor, remuneration or other thing of value, other than that to which I am lawfully entitled, for and in the performance of that duty, So Help Me God!

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE IX

ENROLLMENT ORDINANCE

Revisions Approved
By PBC Resolution #02-03

ENROLLMENT STATUTE
OF
THE PAWNEE TRIBE OF OKLAHOMA

Section 1. Authority: This Enrollment Statute is hereby enacted under the authority contained in and delegated by ARTICLE III – MEMBERSHIP OF THE PAWNEE NATION, Section 3 of the Constitution of the Pawnee Nation of Oklahoma.

Section 2. Purpose: This Enrollment Statute provides for the maintenance of current membership rolls as defined by ARTICLE III – MEMBERSHIP OF THE TRIBE, SECTION 1, and procedures by which future membership will be determined as defined in ARTICLE III – MEMBERSHIP OF THE TRIBE, (1937 Base Roll).

This Enrollment Statute recognizes the rights of review by the Nasharo Council of the Pawnee Nation of Oklahoma as delegated and provided for in ARTICLE IV – PAWNEE BUSINESS COUNCIL, Section 3, of the Constitution of the Pawnee Nation of Oklahoma. Said article reads as follows:

All acts regarding membership or Claims or Treaty Rights of the Pawnee Business Council shall be subject to review of the Nasharo Council in accordance with this Constitution

Section 3. Definitions:

Membership – All persons enrolled with the Pawnee Nation of Oklahoma in accordance with this Statute and the Constitution of the Pawnee Nation, maintaining eligibility descent pursuant based on the official 1937 Base Roll.

Honorary Member – The Pawnee Business Council may bestow an honorary membership to any person it considers to be worthy of such membership. This membership will entitle the person to the title “Honorary Member of the Pawnee Nation of Oklahoma” only and will in no way qualify said member for any benefits, assets or voting rights of regular member of the Pawnee Nation.

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Business Council – The Pawnee Business Council, the elected governing body of the Pawnee Nation of Oklahoma as established by Article IV of the Constitution of the Pawnee Nation of Oklahoma.

Constitution – The Constitution of the Pawnee Nation adopted on July 4th, 1998.

Enrollment Committee – This committee will consist of three members of the Business Council and any number of other members of the Nasharo Council and/or members of the Pawnee Nation appointed by the Business Council. The chairperson of this committee will be responsible for reporting any or all information concerning enrollment/membership to the Business Council *(and make this same information available to the Nasharo Council on request. The Enrollment Director and/or Enrollment Assistant shall also accompany the Chairperson to Nasharo Council meetings).*

Enrollment Assistant – The person(s) appointed or assigned by the Business Council having the responsibility of maintaining membership enrollment, correspondence, applications and other duties as may be assigned. The Enrollment Assistant will provide the Enrollment Committee such information and materials as may be needed for them to make decisions concerning enrollment and other matters as provided for in this Statute.

Applicant for Enrollment – The application for enrollment in the Pawnee Nation of Oklahoma will contain all information necessary for the Enrollment Committee to confirm an applicant's eligibility.

Dual Enrollment – The enrollment of a person in two or more federally recognized tribes or nations. The Pawnee nation does not recognize Dual Enrollment. Persons who are found to be dually enrolled and refuse to give up their membership with other tribe(s) or nation(s) will be disenrolled.

Disenrollment – This is the official action taken by the Business Council to remove an individual's name from the membership roll. The grounds for disenrollment are stated in this statute. The burden of providing grounds for disenrollment is always on the tribe.

Relinquishment – The voluntary and official act of an individual to have his/her name removed from the Membership Rolls of the Pawnee Nation. This action can only be taken by the individual, not by the tribe. Acceptable proof of

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relinquishment may be a signed letter of relinquishment by the person requesting such act or a signed form letter designed by the tribe, available at the Enrollment Office.

Types of Relinquishments:

Absolute Relinquishment – Is requested when a person permanently gives up all rights of tribal membership. This becomes effective on the date the statement is received by the Pawnee Business Council.

Conditional Relinquishment – Is requested when a person relinquishing be removed from the tribal roll, only if/when accepted as a member of another tribe. This type relinquishment occurs when condition is met. If he/she is not accepted, the original membership in the Pawnee Nation stands unchanged. No paybacks on annuities or monies received from the Pawnee Nation will be required.

Section 4. Enrollment Procedures:

Application: Persons desiring to be considered for enrollment in the Pawnee Nation of Oklahoma must file an application for enrollment with the enrollment assistant. This provided by the enrollment assistant and must be returned completed and accompanied with any documentation not limited to:

- Applicant's original state-issued birth certificate
- Family Tree Chart
- Adoption documents
- Notarized Paternity Affidavit signed by both mother and father of applicant
- A DNA or genetic marker test (obtained at the applicant's sole expense) determining the probability that a specific tribal member is the natural parent of the applicant to be not less than 97% certainty
- Hospital Birth Record

Any other information needed to determine eligibility. Any legal document must be original and certified true. The burden of proof lies on the applicant. Application forms may be obtained by oral or written request from:

Pawnee Nation of Oklahoma

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Attn: Enrollment Assistant
PO Box 470
Pawnee, OK 74058 or
Telephone Area Code: 918-762-3621, Ext. 11 or 25

Original documents will be returned to applicant upon request.

Non-Tribal Members: Where applicants are denied enrollment due to insufficient Pawnee Blood quantum, a Certificate Degree of Indian Blood Non-Tribal Member (CDIB) card will be issued to tribal member(s) for use in receiving services for school and medical purposes. A copy of the tribal member(s) birth certificate will be required and kept in the file of the descendant's enrollment file or enrolled members files for documentation and future use.

- **Minor or Incompetent Persons** – Applications for minors (under age of 18) or incompetent persons may be filed by parents, legal guardians or legal agents of said persons.
- **Degree of Pawnee Indian Blood** – The applicant will provide the name(s) of the direct Pawnee Ancestors the application is based on. The Enrollment Assistant will mathematically compute the applicant's degree of Pawnee Indian blood using this information and past Pawnee Tribal rolls, if needed.
- **Adoption** – This refers to person(s) who may be eligible for enrollment and have been adopted. The adopted person's eligibility is determined through his/her natural parents. Documentary evidence submitted to support an adopted child/person's application must show relationship to the natural parent(s) through whom eligibility is determined. All information concerning adopted persons will be treated as confidential and shall not be made available to any person including the applicant. This information will be made available to enrollment personnel on a "need-to-know" basis only. Information concerning acceptance/denial of application will be returned to the adopted parent or authorized legal-guardian by certified mail.

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- **Records** – The enrollment assistant will maintain the records of all applications and applicable documentation regardless of the determination. (Records will be kept in locked file cabinets). Only the enrollment clerk and director as well as enrollment committee shall have access to enrollment records.
- **Processing of Applications** – Upon the receipt of a completed and signed application, the enrollment assistant will compute the degree of Pawnee Indian Blood and assure the application package is complete. Application package will then be presented to the enrollment committee. The enrollment committee will review the information contained therein and make a recommendation for motion to include the applicants name on a resolution to the Pawnee Business Council for action or reject the application.
- **Notification of Due Process** - The applicant will be notified in writing as to the disposition of their applications. Applicants who are denied enrollment will be informed as to the reason(s) for denial of enrollment and right of appeal. Applicants denied enrollment may appeal in writing to the Nasharo Council at the next scheduled quarterly meeting.
- **Loss of Membership** – Disenrollment is the official action taken by the Pawnee Business Council to remove an individual's name from the membership roll. Grounds for such action are:
 - Any member found to be currently enrolled in another tribe who, refuses to relinquish membership with the other tribe,
 - Any person having been found to have been enrolled on the basis of false information or error.

Deceased Members – Date of death shall automatically be noted on the tribe's membership roll, provided that documentary evidence to the fact is confirmed by receipt of either:

Death Certificate
BIA Record
Mortuary Records
Hospital Records
Obituary Notice from newspaper
Social Security Notification from Internet

PAWNEE TRIBE OF OKLAHOMA

Law and Order Code

TITLE X

GUARDIANSHIP AND
PROTECTIVE PROCEEDING ACT

Approved by PBC Resolution #06-25
April 26, 2006

TITLE X
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

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TITLE GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Section 1-101 Short Title

This Act may be cited as the Guardianship and Protective Proceedings Act.

Section 1-102 Rule of Construction and Purpose

- a. This Act shall be liberally construed and applied to promote its underlying purposes and policies
- b. The underlying purposes and policies of this Act are to:
 1. Simplify and clarify the law concerning the affairs of missing persons, protected persons, and incapacitated persons;
 2. Promote a speedy and efficient system for managing and protecting the estates and the health, safety, and welfare of protected persons and to provide for and coordinate general and limited guardianships and conservatorships for protected persons.

Section 1-103 Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this Act, the principles of law and equity supplement its provisions.

Section 1-104 Severability

If any provisions of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 1-105 Construction Against Implied Repeal

This Act is a general act intended as a unified coverage of its subject matter and no subsequent legislation shall be construed to repeal by implication any part of this Act if that construction reasonably can be avoided.

Section 1-106 Delegation of Powers by Guardian or Conservator

A guardian or conservator of a protected person may, by a properly executed power of attorney that bears on its face the approval of a judge of the District Court of the Pawnee Nation, delegate to another appropriate person, for a period not exceeding one (1) month, any power regarding care, custody or property of the protected person, except the power to consent to marriage or adoption of a protected person.

GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ACT

Section 1-201

General Definitions

As used in this Act:

1. "Claims" in respect to a protected person, includes liabilities of the person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.
2. "Court" means the District Court of the Pawnee Nation.
3. "Conservator" means a person who is appointed by a Court to manage the estate of protected person and also includes a limited conservator.
4. "Disability" means an inability to manage property and business affairs and/or an inability to provide for basic physical, or mental, or emotional health needs for such reasons as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or, because of confinement, detention by a foreign power, or disappearance.
5. "Estate" includes the property of the person whose affairs are subject to this Act.
6. "Guardian" means a person who has qualified as a guardian of the physical and/or mental and/or emotional needs of an incapacitated person pursuant to parental or spousal nomination or court appointment and includes a limited guardian, but excludes one who is merely a guardian ad litem; and, a guardian of a person may also function as a conservator of that person's property by order of the Court, after hearing, in the best interest of the protected person.
7. "Incapacitated person" means any person except a minor who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.
8. "Lease" includes an oil, gas, or other mineral lease.
9. "Letters" includes letters of guardianship and letters of conservatorship.
10. "Minor" means a person who is under eighteen years of age.
11. "Mortgage" means any conveyance, agreement, or arrangement to which property is used as collateral.
12. "Organization" includes a corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.
13. "Parent" included any natural person entitled by law to make decisions for the care and control of a minor child or who is entitled by law of intestate succession to inherit from a person as a parent.
14. "Person" means an individual or an organization.
15. "Petition" means a written request to the Court for an order.
16. "Proceeding" includes action at law and suit in equity.
17. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

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GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

18. "Protected person" means a person for whom a conservator or guardian has been appointed or other protective order has been made because the person is a missing, disappeared, person, and/or is an incapacitated person.
19. "Protective proceedings" means a proceeding under this Act for protection of the property or care of physical and/or mental and/or emotional needs of a person.
20. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing, except as prohibited by Federal law.
21. "Visitor" means a person appointed in any protective proceeding who is trained in law, nursing, social work, or who is an officer, employee, or special appointee of the Court, and has no personal interest in the proceeding.
22. "Ward" means a person for whom a guardian and/or a conservator has been appointed.

Section 1-301 Territorial Application

Except as otherwise provided, this Act applies within the area described in Title I Pawnee Nation Law and Order Code, Section 3.

Section 1-302 Subject Matter Jurisdiction

To the full extent permitted by the Constitution and laws of the Pawnee Nation the Court:

- a. Has jurisdiction over all subject matter relating to estates and property of protected persons;
- b. Has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters that come before it;
- c. Has jurisdiction over protective proceedings;
- d. Has authority to consolidate separate conservatorship and guardianship proceedings as to the same person into a single proceedings for ease of administration and coordination of protections.

Section 1-303 Multiple Proceedings; Transfer

- a. If a protective proceeding under this Act could also be maintained in a Court other than the Pawnee Nation District Court, the Court in which the proceedings is first commenced has the exclusive right to proceed to determine jurisdiction and venue and all other courts must hold the

TITLE GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

- Matter in abeyance until the court of first commencement declines jurisdiction or venue or transfers the matter to another court for the second court's exercise of jurisdiction and venue.
- b. If the Pawnee Nation District Court, in the interest of justice, determines that a protective proceeding should be located in another court's jurisdiction or venue, the Court may dismiss or transfer the proceeding.
 - c. If the Pawnee Nation District Court, in the interest of justice, determines that a protective proceedings should be transferred to the Pawnee Nation District Court, the Judge can by order consent to the transfer.

Section 1-304 Procedures

Unless specifically provided to the contrary in this Act or inconsistent with its provisions, the Pawnee laws of civil procedure, including the rules concerning vacation of orders and appellate review govern proceedings under this Act.

Section 1-305 Jury Trial

A party is entitled to trial by jury in any protective proceeding in which any controverted question of fact arises and as to which any party has a right to trial by jury under the Pawnee Constitution or Pawnee laws or this Act.

Section 1-306 Appeals

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the laws applicable to the appeals to the Supreme Court of Pawnee Nation, but in protective proceedings in which jury trial has been had the scope of review in jury cases shall apply.

Section 1-401 Waiver of Notice and Persons Who May Not Waive Notice

A person, including a guardian, guardian ad litem, conservator, or other fiduciary, may waive notice by a signed writing, or by an appearance at a hearing for which no written notice was given; but no person for whom a guardianship, conservatorship, or other protective order is sought, no ward, no protected person, may waive any notice.

Section 1-402 Guardian ad Litem

At any point in the proceeding, the Court may appoint a guardian ad litem to represent the interest of a person in the Court determines that representation of the interest otherwise would be adequate. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The Court as a part of the record of the proceedings shall set out its reasons for appointing a guardian ad litem.

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GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Section 1-501

Effectiveness of Appointment of Guardian and/or Conservator for Incapacitated Person by Will or Other Writing

The parent of an unmarried incapacitated person and the spouse of a married incapacitated person may appoint a guardian and/or conservator for the incapacitated person in a will or in a signed writing attested by at least two witnesses. A person may appoint a guardian or conservator or attorney-in-fact to act for himself/herself in the event he/she become an incapacitated person in a signed writing that has been attested by at least two witnesses made prior to incapacity.

- a. Such appointment is effective when the guardian/conservator nominated, after seven days written notice to the incapacitated person and to the person or organization having care of the incapacitated person and to the incapacitated person's nearest adult relative, files an acceptance of the appointment in the District Court of the Pawnee Nation. The acceptance must be accompanied by the original appointing instrument or a certified copy of it. This procedure is not available in the instance of any missing person and a petition must be filed for appointment of a conservator of the property of a missing person.
- b. The notice required in paragraph (a) above must state that the appointment may be terminated by filing a written objection in the Court.
- c. Upon the filing of a written objection to an appointment by will or in a signed writing attested by at least two witnesses, the appointment is terminated and the Court will try the matter as a protective proceeding and, if supported by a preponderance of the evidence, appoint a suitable person or persons as guardian and/or conservator, including the person who filed the acceptance of appointment.

Section 1-502

Procedure for court-appointment of a Guardian or Conservator for a Protected Person

- a. A protested person or any person interested in the welfare of an incapacitated or missing person and anyone who would be adversely affected by lack of effective management of the person's property and business affairs may petition for appointment of a guardian, or conservator, or limited guardian or limited conservator for the person, or both, which petition must be verified and must specifically state the reasons it is believed that the subject of the petition lacks capacity to take care of business or physical, mental or emotional needs.
- b. A petition must state, to the extent known, the interest of the petitioner, the name, age, residence, and address of the person to be protected, the name and address of the guardian, if any, that name and address of the nearest relative known to petitioner, a general statement of the person's property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the person is entitled, and the reason why appointment of a guardian or conservator is

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- requested, and the name and address of the person whose appointment is sought and the basis of the claim for appointment.
- c. After the filing of a verified petition, the Court shall set a date for hearing so that notices may be given, and, unless the subject of the protective proceeding is represented by counsel, appoint an attorney to represent the person in the proceeding. The person so appointed may be granted the powers and duties of a guardian ad litem. A person alleged to be incapacitated must be examined by a physician or other qualified person appointed by the Court who shall submit a report in writing to the Court and it is preferable that the examiner not be a physician connected with any institution in which the person is patient or is detained. A person alleged to be incapacitated also must be interviewed by a visitor sent by the Court. The visitor also shall interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside in the appointment is made and submit a report in writing to the Court. The Court may utilize the service of any public or charitable agency as an additional visitor to evaluate the condition of the allegedly incapacitated person and to make appropriate recommendations to the Court.
 - d. A person alleged to be incapacitated is entitled to be present at the hearing in person. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including any examining physician or other examiner and any visitor, and to trial by jury.
 - e. Protective proceedings shall be afforded the same confidentiality as juvenile proceedings, for the protection of the subject of the proceeding; and no record of any protective proceeding and no paper filed therein is to be released to anyone other than the subject of the proceeding or said person's counsel or to the person who prepared the paper without the permission of the Court, and all protective proceedings are closed and confidential proceedings.
 - f. Any person may apply for permission to participate in the proceeding, and the Court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated person or missing person will be served thereby and the Court may attach appropriate conditions to the permission.

Section 1-503

Emergency Orders; Temporary Guardians and Conservators

- a. If an incapacitated person has no guardian, an emergency exists and on appropriate verified petition by an interested person the Court may ex parte appoint a temporary guardian whose authority may not extend beyond the next regularly scheduled criminal docket of the Pawnee Nation District Court and who must at that docket day appear before the Court for the purpose of advising the Court whether to dismiss the matter or show cause to continue with a protective proceeding for the

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- benefit of and in the best interest of the alleged incapacitated person's physical and/or mental and/or emotional well being and property interests. An emergency temporary guardian may exercise those powers granted in the order but must interview the alleged incapacitated person and view and investigate the living conditions of said person and investigate said person's ability to take care of advising the Court whether to dismiss the matter or show cause to continue with a protective proceeding for the benefit of and in the best interest of the alleged incapacitated person.
- b. If a duly appointed permanent guardian or conservator of a missing or incapacitated person is not effectively performing duties and the Court further finds that the welfare of the incapacitated person requires immediate action, it may appoint, after appropriate petition or motion, or on the Court's own motion, with or without notice, a temporary guardian or conservator will have the powers of a general guardian or conservator for a specified period not to exceed six (6) months. The authority of any permanent guardian or conservator previously appointed by the Court is suspended as long as a temporary guardian or conservator has authority.
 - c. The Court may remove a temporary guardian or conservator at any time, or extend the term of service or of temporary guardianship or conservatorship, including one appointed ex parte when an emergency existed, as required by the best interest of the subject of the protective proceeding. A temporary guardian or conservator shall make any report the Court requires. In other respects the provisions of this Act concerning guardians and conservators apply to temporary guardians and conservators.

Section 1-504 Requirement of Notice

- a. Notice of any hearing concerning a missing or incapacitated person, other than the notice given of a show cause hearing to be heard at the next regularly scheduled criminal docket of the Pawnee Nation District Court as set out in Section 1-503 a , above, must be given at least ten (10) calendar days in advance of the hearing.
- b. Notices in matters to which this Act applies must be given to each of the following:
 - 1. a person alleged to be incapacitated and spouse, or, if there is no spouse, to adult children, and if there are no adult children, to parents, if any, and if there is no parent to adult siblings, and if there are no adult siblings, then to the nearest adult relatives if any can be found; and
 - 2. any person who is serving as guardian, conservator, or who has the care and custody of the person alleged to be incapacitated; and

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3. a missing person or any other person as directed by the Court,

except that no notice must be given to a person who is not the subject of the hearing and who was served initially by publication notice and who has not appeared or answered.

Section 1-505 Method of Giving Notice

- a. Notice of a Section 1-503 a show-cause hearing and of a petition for appointment of a guardian or conservator of an alleged incapacitated person must be served on the alleged incapacitated person by delivering a copy to them in person.
- b. Notices to all other persons, including missing persons, must be served either by delivering a copy to them in person or by mailing to them by certified, registered, or ordinary first-class mail, addressed to the person to be notified at the person's residence or place of business or at an address furnished by the person for receiving notices, and if the address or identity of a person is not known and cannot be ascertained by reasonable diligence, and after the filing of an affidavit stating the address of the person is not known and stating the methods used to find the address and that the efforts to discover the person's address were to no avail, notice may be given by publishing, at least once a week for two (2) consecutive weeks, a copy of the notice of hearing in a newspaper having general circulation in the county, town/city, tribe, or place of the person's last-known location, whichever place of publication is best calculated to give actual notice to the person, and also by publishing once a week for two (2) consecutive weeks in a newspaper of general circulation in the place of the site of the Pawnee Nation District Court. The first publication of published notices must be at least ten (10) days prior to the time set for the hearing of which notice is being given. In publishing notices of protective proceedings, the initial letters only of the name of the subject of the proceeding will be used if the person is an incapacitated or alleged incapacitated person together with the information that the person is an incapacitated or alleged incapacitated person, but the name of a missing person will be stated together with the information that the person is a missing person.
- c. The Court for good cause shown may provide for a different method or time for giving notice for any hearing.
- d. Proof of giving of notice must be made not later than the time of the hearing being noticed and said proof must be filed of record in the protective proceeding being noticed.
- e. A person other than the subject of a protective proceeding can waive notice.

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Section 1-506 Who May Be a Guardian or Conservator

- a. Any qualified person or persons may be appointed guardian and/or conservator for an incapacitated person or conservator for a missing person, giving priority in the order listed:
 1. To the most recent nomination made by the protected person in a signed writing attested by at least two witnesses prior to any incapacity or disappearance.
 2. To the protected person's spouse or a person nominated by the spouse in a signed writing that is attested by at least two witnesses prior to any death or incapacity of the spouse.
 3. An adult child of a protected person.
 4. A parent of a protected person or a person nominated by the parent in a signed writing that is attested by at least two witnesses prior to any death or incapacity of the parent.
 5. Any relative of the protected person with whom the person has lived for more than six (6) months prior to the filing of the petition.
 6. A person nominated by the person who is caring for or paying for the care of the incapacitated person
- b. With respect to persons having equal priority, the Court shall select the one it deems best qualified to serve. The Court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having a lower priority or having no priority if the Court makes findings of fact that the person selected is better qualified.

Section 1-507 Findings: Order of Appointment and Letters to Issue

- a. The Court shall exercise the authority conferred in this Act so as to encourage the development of maximum self-reliance and independence of incapacitated persons and make appointive and other orders only to the extent necessitated by the incapacitated person's limitations or other conditions warranting the protective proceeding.
- b. The Court may appoint a guardian or conservator as requested if it is satisfied that the person for whom a guardian or conservator is sought is not able to take care of physical, **and/or mental, and/or emotional needs or is unable to manage property** and business affairs effectively, because the protected person has mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, is detained by a foreign power, or is missing, and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person or because the person has property that will be wasted or dissipated unless property management is provided or **because money is needed for the support, care and** welfare of the person or those entitled to the person's support, and letters therefore shall issue. The Court on appropriate findings may treat the petition as one for a protective order and proceed accordingly, and enter any other appropriate order or dismiss the proceedings.

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- c. The Court, at the time of appointment or later, on its own motion or after petition, motion, or application of any interested person, may limit the powers of a guardian or conservator otherwise conferred by this Act and thereby create a limited guardianship or **conservatorship. Any limitation on the statutory power of a guardian** or conservator of a protected person must be endorsed on the letter's issued, even if the letters are issued to one who was nominated in a signed writing attested by at least two witnesses. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.
- d. A Court's determination that a basis for appointment of a conservator alone Or for a protective order as to property exists has no effect on the capacity of the protected person absent a finding that the protected person in incapacitated.

Section 1-508 Acceptance of Appointment as Consent to Jurisdiction

By accepting appointment, a guardian and/or conservator of a protected person submits personally to the jurisdiction of the Court in any proceeding by anyone relating to the appointee's guardianship or conservatorship or appointment. All notices must be given to the appointee at the address listed in the Court records and as then known to any petitioner, movant, or applicant.

Section 1-509 General Powers and Duties

Except as limited by the Court and shown in the letters issued to a guardian or conservator:

- a. The guardian of an incapacitated person is responsible for care, custody, and control of the ward, but is not liable to third persons by reason of that responsibility for acts of the ward.
- b. A conservator acts a fiduciary and shall observe the standards of care applicable to trustees and appointment as a conservator vests title in the conservator and divest the ward.
- c. The Court alone or through a conservator has power with respect to the estate of a protected person to act while a petition for appointment of a conservator or for other protective order is pending and after determination of necessity to preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person.
- d. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person, the Court, alone or through a conservator, for the benefit of the protected person and members of the person's immediate family, has all the powers over the

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estate and business affairs which the person could exercise if present and not under disability, except the power to make a will.

- e. The Court may exercise or direct the exercise of the following powers only if, after notice and hearing, the Court determines it is in the best interest of the protected person and that the person is incapable of consenting or has consented:
 - 1. to exercise or release powers of appointment of which the protected person is done;
 - 2. to renounce or disclaim interest;
 - 3. to make gifts in trust or otherwise;
 - 4. to change beneficiaries under insurance or annuity policies.
- f. After the service of notice in a proceeding for a conservator or other protective order and until termination of the proceeding the Court has exclusive jurisdiction to determine the need for a conservator, how the estate of the protected person must be managed, expended, or distributed to or for the use of the protected person and the protected person's dependents or other claimants, and to determine concurrently with any other jurisdiction, except as prohibited by Federal law, the validity of claims against the person or estate of the protected person and questions of title concerning any asset.
- g. The court, with or without appointing a conservator, after establishing that incapacity Exists, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property, and the sale, mortgage, lease, or other transfer of property, or addition to or establishment of a suitable trust. The Court may ratify any contract, trust or other transaction relating to a protected person's property that the Court determines is in the best interest of the protected person. The Court, before approving or transacting any such matters shall consider the interests of dependents and creditors of the protected person as well as the continuing needs of the protected person. The Court may appoint any special conservators necessary to carry out the powers of this Act.
- h. Within thirty days of appointment a guardian shall prepare and file with the Court a plan for the care of the ward and a conservator shall prepare and file with the Court a complete and verified inventory of the estate subject to the conservatorship and copies of all such reports are to be given to the ward or to the ward's attorney; and they shall furnish reports on request of any interested person and shall report to the Court as requested by the Court, but no less than annually.

Section 1-510

Termination of Appointments

- a. The authority and responsibility of a guardian or conservator for a protected person terminates upon:

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1. The end of the necessity for the guardian and/or conservator, after motion and hearing;
2. The death of either the ward or the guardian/conservator;
3. Upon the removal or resignation of the guardian/conservator, after motion and hearing;
4. Upon the incapacity of the guardian/conservator, after motion or hearing.

Terminate does not affect liability for acts prior to the termination and does not end an obligation to account for funds and asset of a ward or to make any final reports.

- b. On petition of the ward or any person interested in the ward's welfare, the Court, after hearing, may remove a guardian or conservator if in the best interest of the ward. On petition of the guardian/conservator the Court, after hearing, may accept a resignation.
- c. An order adjudication incapacity or the necessity for a conservator of property may specify a minimum period, not exceeding six months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated or needing a conservator of property and asking for termination of guardianship and/or conservatorship. A request for an order may also be made informally to the court and any person who knowingly interferes with transmission of such a request may be adjudged guilty of contempt of Court.
- d. Upon removal, resignation, incapacity or death of a guardian or conservator the Court may appoint a successor and make any other appropriate order. Before appointing a successor or ordering that a ward's incapacity or need for protection has terminated the Court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.
- e. Upon termination of a conservatorship all title to all assets revert to the protected person.

Section 1-511 Bond

The Court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the estate in the conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the Court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks the power to sell or convey without Court authorization. The Court, in

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lieu of sureties on the bond may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of land.

Sureties, unless limited by the terms of the approved bond, are jointly and severally liable with the conservator and with each other.

By executing a bond a surety submits to the jurisdiction of the Court.

Section 1-512 Subsequent Petitions

- a. Any person interested in the estate of a protected person can petition the Court for an order requiring a bond, requiring an accounting for the administration of the estate of the protected person, directing distribution, asking for removal of a guardian/conservator, or asking for any appropriate relief.
- b. A guardian/conservator may petition the Court for any instructions regarding their authority or fulfillment of duties.
- c. After notice and hearing the Court may give appropriate instructions to guardians/conservators or make any appropriate orders.

Section 1-513 Prohibited Transactions

Any sale or encumbrance to a conservator or guardian or to the spouse, agent, or attorney of a conservator or guardian, to the relative of a conservator or guardian, or to any business or other organization in which the conservator or guardian has a substantial beneficial interest or any other transaction involving the estate of a ward is void unless the transaction has been approved by the Court after notice to all interested persons.

Section 1-514 Protection

A person who in good faith assists or deals with a guardian or conservator other than for those transactions requiring a Court order is not required to inquire into the authority of the guardian or conservator unless there is a restriction on the face of the letters issued. A person is not required to see to the proper application of estate assets paid or delivered to a guardian or conservator.

Section 1-515 Conservator in Administration

In addition to other powers enumerated in this Act, conservators may expend or distribute income or principal of an estate without Court authorization or confirmation for the support, education, care, or benefit of the protected person and said person's dependents as long as a plan therefore has been filed with the Court. A conservator may pay, prosecute, or defend claims on behalf

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of a protected person and a conservator may deal with the ward's estate the same as the ward could do if present and not incapacitated unless prohibited by Federal law or the letters are limited.